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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

Nos. 76-1121, 76-1153 & 76-1162

AMERICAN BROADCASTING COMPANIES, INC., ET AL.,
Petitioners,

—v.—

WRITERS GUILD OF AMERICA, WEST, INC.,
Respondent.

ASSOCIATION OF MOTION PICTURE AND TELEVISION PRODUCERS, INC.,
Petitioner,

—v.—

WRITERS GUILD OF AMERICA, WEST, INC.,
Respondent.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

—v.—

WRITERS GUILD OF AMERICA, WEST, INC., ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI IN NO. 76-1121 FILED FEBRUARY 14, 1977
PETITION FOR CERTIORARI IN NO. 76-1153 FILED FEBRUARY 22, 1977
PETITION FOR CERTIORARI IN NO. 76-1162 FILED FEBRUARY 22, 1977
CERTIORARI GRANTED APRIL 25, 1977

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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

In the Matter of:

AMERICAN BROADCASTING COMPANIES, INC., CBS INC., AND NATIONAL BROADCASTING COMPANY, INC.

Case Nos.: 31-CB-1203-2
31-CB-1223
31-CB-1316
31-CB-1313
31-CB-1355

3.8.73 Charge filed in Case No. 31-CB-1203-2

4.4.73 Charge filed in Case No. 31-CB-1223

4.18.73 Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, dated

5.2.73 Union's Answer to Consolidated Complaint, dated

5.14.73 Joint request for continuance of hearing, dated

5.14.73 Teletype rescheduling hearing, dated

5.16.73 Teletype rescheduling hearing, dated

5.18.73 Consolidated amended complaint, dated

5.21.73 Hearing opened

5.22.73 Union's Answer to Consolidated Amended Complaint, dated

7.11.73 Change filed in Case No. 31-CB-1313

7.16-73 Charge filed in Case No. 31-CB-1316

7.25.73 Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, dated

8.2.73 Joint Motion to reopen record, consolidated cases, and vacate time set for filing of briefs, dated

8.10.73 Order on Motion to reopen record, consolidated cases, and vacate time for filing briefs, dated

8.16.73 Order rescheduling hearing, dated

8.22.73 Union's Answer to Consolidated Complaint, dated

9.5.73 Charge filed in Case No. 31-CB-1355

9.7.73 Union's request to reschedule hearing, dated

9.10.73 Joint Motion by teletype to continue hearing, dated

9.12.73 Teletype rescheduling hearing, dated

9.20.73 Complaint and Notice of Hearing, dated

10.4.73 Union's Answer to Complaint, dated

11.8.73 Joint Motion by teletype to reschedule hearing, dated

11.9.73 Teletype rescheduling hearing, dated

11.9.73 Motion to Consolidate Cases, dated

11.12.73 Teletype rescheduling hearing, dated

11.14.73 Teletype to Show Cause from Administrative Law Judge, returnable on or before November 21, 1973, why the General Counsel's Motion to Consolidate Case 31-CB-1355 with 31-CB-1203-2, 1223, 1313 and 1316 should not be granted, dated

11.26.73 Parties' Stipulation, dated

12.7.73 Teletype postponing hearing, dated

12.11.73 General Counsel's Motion to Amend Complaints, dated

12.11.73 Second Consolidated Amended Complaint, dated

12.13.73 Union's Answer to Second Consolidated Amended Complaint, dated

12.18.73 Parties' Motion to submit stipulation of facts, dated

12.18.73 Parties' stipulation of facts, dated

1.25.74 Administrative Law Judge's Order closing hearing, dated

7.10.74 Administrative Law Judge's letter advising the parties that they have until August 9, 1974, to submit written statement of position, dated

8.9.74 Union's statement of position, dated

9.18.74 Administrative Law Judge's Decision issued

9.18.74 Administrative Law Judge's Order correcting record, dated

11.27.74 Respondent's brief in support of exceptions

11.29.74 Union's exceptions to the Decision of the Administrative Law Judge, received

1.8.75 Cross-Exceptions to the Administrative Law Judge's Decision and Order by the Petitioner, American Broadcasting Companies, Inc., and National Broadcasting Company, Inc., received

1.15.75 Cross-Exceptions of Charging Party Association of Motion Picture and Television Producers, Inc., to the Decision of the Administrative Law Judge, received

5.13.75 Board's Decision and Order, dated

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

Division of Judges

Case No. 31-CB-1203-2

WRITERS GUILD OF AMERICA, WEST, INC.

and

ASSOCIATION OF MOTION PICTURE AND
TELEVISION PRODUCERS, INC.

Case No. 31-CB-1223

WRITERS GUILD OF AMERICA, WEST, INC.

and

AMERICAN BROADCASTING COMPANIES, INC.
COLUMBIA BROADCASTING SYSTEM, INC.
NATIONAL BROADCASTING COMPANY, INC.

Case No. 31-CB-1316

WRITERS GUILD OF AMERICA, WEST, INC.

and

ASSOCIATION OF MOTION PICTURE AND
TELEVISION PRODUCERS, INC.

Case No. 31-CB-1313

WRITERS GUILD OF AMERICA, WEST, INC.

and

AMERICAN BROADCASTING COMPANIES, INC.
COLUMBIA BROADCASTING SYSTEM, INC.
NATIONAL BROADCASTING COMPANY, INC.

Case No. 31-CB-1355

WRITERS GUILD OF AMERICA, WEST, INC.

and

QM PRODUCTIONS

SECOND CONSOLIDATED AMENDED COMPLAINT

It having been charged by Association of Motion Picture and Television Producers, Inc., herein called Association, in Cases Nos. 31-CB-1203-2 and 31-CB-1316, and by American Broadcasting Companies, Inc.; Columbia Broadcasting System, Inc.; and National Broadcasting Company, Inc., herein called respectively American, Columbia and National, in Cases Nos. 31-CB-1233 and 31-CB-1313, and by QM Productions, herein called QM, in Case No. 31-CB-1355 that Writers Guild of America, West, Inc., herein called Respondent, has engaged in, and is engaging in, certain unfair labor practices affecting commerce, as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C. Sec. 151, *et seq.*, herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, on behalf of the Board, by the undersigned Acting Regional Director pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, Series 8, as amended, hereby issues this Second Consolidated Amended Complaint and alleges as follows:

1. (a) The charge in Case No. 31-CB-1203-2 was filed by the Association on March 8, 1973, and a copy thereof was served on Respondent on the same date by registered mail.

(b) The charge in Case No. 31-CB-1316 was filed by the Association on July 16, 1973, and a copy thereof was served on Respondent on the same date by registered mail.

(c) The charge in Case No. 31-CB-1223 was filed by American, Columbia, and National on April 4, 1973, and a copy thereof was served on Respondent on the same date by registered mail.

(d) The charge in Case No. 31-CB-1313 was filed by American, Columbia and National on July 11, 1973, and a copy thereof was served on Respondent on the same date by registered mail.

(e) The charge in Case No. 31-CB-1355 was filed by QM on September 5, 1973, and a copy thereof was served on Respondent on the same date by registered mail.

2. (a) The Association is now, and at all times material herein has been, an incorporated employer association with its principal place of business at Los Angeles, California, which admits to membership firms engaged in the production and distribution of motion picture and television films and which exists in part for the purpose of negotiating, executing and administering multi-employer collective-bargaining agreements on behalf of its employer-members with the collective-bargaining representatives of their employees, including the Respondent.

(b) The employer-members of the Association, annually, in the course and conduct of their business operations, collectively, sell and ship from their studios in California, directly to points outside the State of California, motion picture films and other products valued in excess of $50,000.

(c) American, a New York corporation, with offices in various locations thoughout the United States, including Los Angeles, California, is engaged in the production and broadcasting of television programs.

(d) American, annually, in the course and conduct of its business at its Los Angeles, California location, derives gross revenues in excess of $100,000 from sales made to customers located outside the State of California, and annually purchases goods valued in excess of $50,000 directly from suppliers located outside the State of California.

(e) Columbia, a New York corporation with offices located in various locations throughout the United States, including Los Angeles, California, is engaged in the production and broadcasting of television programs.

(f) Columbia, annually, in the course and conduct of its business at its Los Angeles, California location, derives gross revenues in excess of $100,000 from sales made to customers located outside the State of California, and annually purchases goods valued in excess of $50,000 directly from suppliers located outside the State of California.

(g) National, a Delaware corporation with offices located in various locations throughout the United States, including Burbank, California, is engaged in the production and broadcasting of television programs.

(h) National, annually, in the course and conduct of its business at its Burbank, California location, derives gross revenues in excess of $100,000 from sales made to customers located outside the State of California and annually purchases goods valued in excess of $50,000 directly from suppliers located outside the State of California.

(i) QM is now, and has been at all times material herein, a California corporation, with its principal place of business in Burbank, California, where it is engaged in the production and distribution of motion picture and television films.

(j) Annually, in the course and conduct of its business operations at its Burbank, California location, QM sells television and motion picture films valued in excess of $50,000 directly to customers located outside the State of California.

3. The Association, through its employer-members, American, Columbia and National, and QM, each is now, and at all times material herein each has been, an employer engaged in commerce, and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

4. The Association, through its employer-members, American, Columbia and National, and QM, each is now, and at all times material herein each has been, an Employer within the meaning of Section 2(2) and 8(b)(1)(B) of the Act.

5. Respondent is now, and has been at all times material herein, a labor organization within the meaning of Section 2(5) and Section 8(b) of the Act.

6. At all times material herein, the following named persons occupied the positions set forth opposite their respective names, and at all times material herein, were agents of Respondent, acting on its behalf, within the meaning of Section 2(13) of the Act:

Ranald MacDougall	—	President
Michael H. Franklin	—	Executive Director
Alan Griffiths	—	Assistant Executive Director
Carey Wilber	—	Co-Chairman of Strike Committee
Patty (last name unknown)	—	Member of Strike Committee
John Furia	—	Television Radio President (Now President of Respondent)
Harlan Ellison	—	Member of Council of Respondent
Brad Radnitz	—	Member of Council of Respondent
John Mendonsa	—	Attorney for Respondent
Emmett Lavery	—	Member of Trial Committee
Irma Kalish	—	Member of Trial Committee
Nate Monaster	—	Member of Trial Committee
Barry Oringer	—	Member of Trial Committee
James Poe	—	Member of Trial Committee
Christopher Knopf	—	Member of Trial Committee
Michael Blankfort	—	Member of Trial Committee
Jack Ellinson	—	Member of Trial Committee
Millard Kaufman	—	Member of Trial Committee

7. Respondent is now, and has been at all times material herein, the exclusive collective-bargaining representative within the meaning of Section 9(a) of the Act of the employees in various appropriate units, employed by the Association members at their respective studios, by American, Columbia and National at their respective studios and by QM at its studios.

8. (a) Up to and including March 4, 1973, Respondent and the Association were parties to a written collective-bargaining agreement entitled "Writers Guild of America 1970 Theatrical and Television Film Basic Agreement" dealing with rates of pay, wages, hours of employment and other terms and conditions of employment, of the employees in the appropriate unit described in paragraph 7 above, which agreement by its terms was effective from June 16, 1970 to June 15, 1973, but which was terminated on March 4, 1973, by Respondent, pursuant to the terms of the Agreement.

(b) At all times material herein American, Columbia and National comprised a multi-employer bargaining unit, and up to and including March 4, 1973, were parties with Respondent to a written collective-bargaining agreement, which was entitled "Writers Guild of America Theatrical and Television Film Basic Agreement of 1970—Networks," dealing with rates of pay, wages, hours of employment and other terms and conditions of employment, for the employees in the appropriate unit for each respective employer as described above in paragraph 7, and which agreement was effective from June 16, 1970 to June 15, 1973, but which was terminated by Respondent on March 4, 1973, pursuant to the terms of such Agreement.

(c) At all times material herein, American, Columbia and National comprised a multi-employer bargaining unit, and up to and including February 13, 1973, were parties with Respondent to a written collective-bargaining agreement, which was entitled "1971 Writers Guild of America Television Freelance Minimum Basic Agreement," dealing with rates of pay, wages, hours of employment and other terms and conditions of employment for the employees in the appropriate unit as described above in paragraph 7, and which agreement was effective by its terms from October 1, 1971 to February 13, 1973.

(d) Up to and including March 4, 1973, Respondent and QM were parties to a written collective-bargaining agreement entitled "Writers Guild of America 1970 Theatrical and Television Film Basic Agreement" dealing with rates of pay, wages, hours of employment and other terms and conditions of employment of the employees in the appropriate unit described above in paragraph 7, which agreement was effective from June 16, 1970, to June 15, 1973, but which was terminated on March 4, 1973, by Respondent pursuant to the terms of the agreement.

9. (a) At all times material herein, the Association, through its employer-members, American, Columbia and National, employed, and presently employ, persons in the classifications set forth below, which persons were, and are, also members of Respondent in good standing, and

such persons at all times material herein have been, and are now, supervisors of their respective employers within the meaning of Section 2(11) of the Act, and are representatives or potential and likely representatives for their respective employers for the purposes, among others, of collective bargaining or the adjustment of grievances within the meaning of Section 8(b) (1) (B):

Producer
Director
Executive Producer
Associate Producer
Producer Director
Research Director
Executive Assistant to the Vice President
Vice President for Program Production
Vice President for Production
General Programming Executive
Vice President of Program Development
Manager of Film Programs
Story Editor
Executive Story Editor
Executive Story Consultant

(b) At all times material herein, QM employed Robert Blees in the classification of Executive Story Consultant, said Blees also being a member of Respondent in good standing.

(c) Blees was, at all times material herein, a supervisor of QM within the meaning of Section 2(11) of the Act, and a representative or a potential representative of QM for the purposes, among others, of collective bargaining or the adjustment of grievances within the meaning of Section 8(b) (1) (B) of the Act.

10. (a) Commencing on or about March 4, 1973, and continuing to June 24, 1973, Respondent engaged in a strike against the Association and its member-employers,

and established and maintained a picket line at certain of the premises of struck American member-employers to protest its dispute with the Association and its member-employers concerning contract negotiations with said Association.

(b) Commencing on or about March 29, 1973, and continuing to July 12, 1973, Respondent engaged in a strike against American, Columbia, and National, and established and maintained a picket line at the premises of each said struck employer to protest its dispute with said employer concerning contract negotiations with each said employer for a new agreement to replace the terminated Writers Guild of America Theatrical and Television Film Basic Agreement of 1970—Networks.

(c) Commencing on or about April 12, 1973, and continuing to July 12, 1973, Respondent engaged in a strike against American, Columbia and National and established and maintained a picket line at the premises of each said struck employer to protest its dispute with said employer concerning contract negotiations with each said employer for a new agreement to replace the expired 1971 Writers Guild of America Television Freelance Minimum Basic Agreement.

(d) Commencing on or about March 4, 1973, and continuing to March 17, 1973, Respondent engaged in a strike against QM, and established and maintained a picket line at the premises of QM to protest its dispute with QM concerning contract negotiations with said QM.

11. In late February 1973, the exact date presently unknown, Respondent prepared, published and distributed Rules for the Conduct of Members During a Strike, which rules are attached hereto and designated as Exhibit I and made a part hereof, to all its members, including those members occupying the positions designated in paragraph 9 above.

12. In February 1973, the exact date presently unknown, Respondent held a meeting attended by a number of members occupying the positions designated in paragraph 9 above, at which meeting Respondent, by Michael Franklin, announced that the strike rules applied to all members.

13. (a) Commencing on or about March 13, 1973, Respondent, through its agent Alan Griffiths, by telegram, threatened to discipline various of its members occupying positions described in paragraph 9 above, if they continued to cross the picket line and work for their respective employer in any capacity.

(b) Commencing on or about March 5, 1973, Respondent, through its agents, Carey Wilber, Alan Griffiths, Patty (last name unknown), John Furia, Harlan Ellison, and Brad Radnitz and by others presently unknown, by telephone, threatened numerous members occupying the positions set forth in paragraph 9 above, with fines and other disciplinary action if they continued to cross the picket line to perform work in any capacity for their respective employer.

(c) Commencing on or about April 6, 1973, Respondent issued Notices of Disciplinary Hearings and Charges against numerous persons occupying the positions set forth in paragraph 9 above, charging them with violating certain of the rules set forth in the Rules for the Conduct of Members During a Strike as set forth in paragraph 11 above, and ordering said persons to appear before a disciplinary board of Respondent on the date set forth in said Notice of Disciplinary Hearing and Charges.

(d) Commencing in late February 1973, the exact date presently unknown, Respondent, through promulgation of its strike rules, as alleged in paragraph 11 above, and specifically Rule 30 thereof, and by other actions including press releases published by *Daily Variety* and other publications, and by direct personal communications by telephone as alleged in paragraph 13(b) above, threatened numerous persons occupying the positions set forth in paragraph 9 above, that for all times in the future no member of Respondent would work with or perform services for them if they failed to honor or otherwise support the strike described in paragraph 10 above.

(e) Commencing on or about May 21, 1973, and continuing thereafter to date, Respondent, pursuant to the Notices of Disciplinary Hearings and Charges alleged in paragraph 13(c) above, commenced or initiated intra-

union trials, on the charges filed against numerous persons occupying the positions set forth in paragraph 9 above.

(f) Commencing on or about June 25, 1973, and continuing thereafter to date, Respondent, in the circumstances described above in subsections 13(c) and (e), fined the persons named below, and others, who occupy the positions set forth in paragraph 9 above the amount set forth opposite their respective names and expelled them from membership in the Respondent because said persons crossed Respondent's picket lines to perform their supervisorial and managerial functions in violation of Respondent's strike rules described above in paragraph 11:

David Victor	—	$50,000 plus costs
Jon Epstein	—	$2,000 plus costs
Herman Saunders	—	$100 plus costs
John Mantley	—	$50,000 plus costs
Robert Blees	—	$25,000 plus costs
Barry Crane	—	$10,000 plus costs

(g) Commencing on or about June 25, 1973, and continuing thereafter to date, Respondent, in the circumstances described above in paragraph 13(c) and (e) fined the persons named below, and others, who occupy the positions set forth in paragraph 9 above the amount set forth opposite their respective names, and suspended them from membership in the Respondent for the period set forth opposite the amount of their fine because said persons crossed Respondent's picket lines to perform their supervisorial and managerial functions in violation of Respondent's rules described above in paragraph 11.

David Levinson	$10,000 plus costs	—2 years
Robert Cinader	$5,000 plus costs	—3 years
Hugh Benson	$100 plus costs	—2 years

14. By the acts and conduct described above in paragraphs 11, 12 and 13, and by each of said acts and conduct, in the circumstances described above in paragraphs 9 and 10, Respondent did restrain and coerce, and is now restraining and coercing the Association and its member-

employers, American, Columbia and National, and QM in the selection and retention of their representatives for the purposes of collective bargaining or the adjustment of grievances, and Respondent did thereby engage in, and is now engaging in, unfair labor practices within the meaning of Section 8(b) (1) (B) of the Act.

15. The acts and conduct of Respondent described above in paragraphs 11 through 14, occurring in connection with the operations of the Association and its member-employers, American, Columbia and National, and QM, described in paragraphs 2 through 4 above, have a close, intimate and substantial relation to trade, traffic, and commerce among the several states and have led, and tend to lead, to labor disputes burdening and obstructing commerce and the free flow of commerce.

16. The acts and conduct of Respondent described above constitute unfair labor practices affecting commerce within the meaning of Section 8(b) (1) (B) and Section 2(6) and (7) of the Act.

WHEREFORE, the General Counsel of the National Labor Relations Board, on behalf of the Board, has caused this Second Consolidated Amended Complaint to be signed and issued this date.

/s/ Abraham Siegel
ABRAHAM SIEGEL
Regional Director
National Labor Relations Board
Region 31
12th Floor, Federal Building
11000 Wilshire Boulevard
Los Angeles, California 90024

Dated at Los Angeles, California,
this 11th day of December 1973.

EXHIBIT I

WRITERS GUILD OF AMERICA, WEST, INC.

February 20, 1973

RULES FOR THE CONDUCT OF MEMBERS DURING A STRIKE

1. Any act or conduct which is prejudicial to the welfare of the Guild is subject to disciplinary action. Conduct tending to defeat a strike or in any way weaken its effectiveness is per se conduct prejudicial to the welfare of the Guild.

2. Writing for any struck producer as designated in a restraining order is prohibited. The term producer includes any employer or potential employer, whether studio, individual, production company network or any representative or subsidiary or associate thereof.

3. Writing for a struck producer is prohibited even through the member be employed by or under assignment to the said producer at the time the strike is called, regardless of the capacity in which the member is employed.

4. Writing for a struck producer will cease immediately upon the calling of the strike, regardless of the extent of the work already completed for said producer as the result of employment commenced prior to the date of the strike.

5. The prohibition against writing for a struck producer obtains regardless of the place at which writing might be done, i.e., whether on or off the premises of the producer.

6. No delivery of literary material shall be made to a struck producer regardless of when it was written, solicited, contracted or paid for.

7. The submission of literary material to a struck producer is prohibited even though neither negotiation for nor consummation of a sale is contemplated until after settlement of the strike.

8. Members shall file with the Guild copies of all literary material completed for and delivered to a struck producer as of the calling of the strike in order that they may be on record with evidence to substantiate their timely work stoppage in the event this matter comes into issue.

9. Immediately upon the calling of a strike members are to inform their agents or any other representatives of all the Guild's strike rules and revoke or suspend as to a struck producer any authorization for representation, either for the sale of material or for services for the duration of the strike.

10. Immediately upon the calling of a strike each member must serve written notice upon each struck producer who may at that time have in his possession any literary material owned by the member. A copy of such notice is to be sent to the Guild. Notice shall be in the following form:

> "I hereby demand that you promptly return to me the following named literary material currently in your possession and owned by me:
>
> (Title of Material)
> _____
>
> (Signature)"
> _____

11. Members are prohibited from engaging in any conference, negotiations, discussions or meeting of any kind, whether in person, by telephone or through the mail, or through an agent or other representative, with any struck producer, his employees, associates, subsidiaries and/or representatives regarding the sale of any literary material or any contract for writing services even though the effective date of such proposed agreement be scheduled for a time after the settlement of the strike.

12. All members are prohibited from crossing a picket line which is established by the Guild at any entrance to the premises of a struck producer.

13. Members are prohibited from entering the premises of any struck producer for the purpose of discussion of the sale of material or contract of employment, regardless of the time at which it is to take effect. Members are also prohibited from entering the premises of any struck producer for the purpose of viewing any film whether it be a completed picture, stock footage, television pilot or whether it be by nature documentary or industrial or any other type. Should a member find it necessary to vist the premises of a struck producer for any reason apart from the foregoing he should inform the Guild in advance of the nature of such prospective visit.

14. Members may not accept from a struck producer for reading, perusal, study or any other purpose any sample script, format, presentation or literary material of any nature which might have any actual or potential connection with future employment of said members as writers or otherwise even though such services are to begin after the conclusion of the strike.

15. The use of a fictitious name of any kind as a means of circumventing strike rules and regulations is prohibited whether or not it be registered with the Guild.

16. The commencement of an assignment for a struck producer or the sale of literary material to a struck

producer so soon after the settlement of a strike as fairly to give rise to the inference that negotiations for the same have been conducted during the course of the strike shall be cause for investigation and is disciplinable, if evidence supports such inference.

17. The acts of any agent or other representative acting on behalf of a member will be imputed to the member in the absence of satisfactory evidence to the contrary.

18. Any agreement entered into by a member prior to the commencement of a strike but in anticipation thereof for the sale or delivery of literary material not then written but to be delivered after the settlement to the strike is forbidden.

19. A member may not, during the course of a strike, conduct negotiations with a struck producer for financing the production of any of his literary material or scripts, or for his participation in such production in any capacity.

20. Every member has the duty of reporting to the Guild the name of any agent or producer or person or entity affiliated with the production, administration or management of a struck producer or company who, in disregard of an existing strike, solicits material from, or the employment of such member or any other member, or otherwise seeks to entice a member into violating the strike rules or regulations.

21. No member, his good intentions granted, may negotiate or seek to negotiate with any struck producer the settlement of a strike or any phase thereof.

22. A member is chargeable with knowledge of all strike rules and regulations, of any strike information or developments circularized through the mail to the membership and of any strike information made known to the entertainment industry through any recognized medium of communication such as trade papers, newspapers, radio broadcasts or telecasts, etc., unless he offers satisfactory evidence that it

was impossible for him to receive such strike information.

23. Writers who are not members of the Guild, but who are reasonably chargeable with knowledge that the Guild is on strike or anticipates striking certain producers, who nevertheless write for or sell literary material to struck producers, or who in any way act to defeat the best interests of the Guild during a strike, will be excluded from membership in the organization.

24. All members, regardless of the capacity in which they are working, are bound by all strike rules and regulations in the same manner and to the same extent as members who confine their efforts solely to writing.

25. A member may not, during a strike, attempt to solicit or negotiate in behalf of a struck producer for the services of a writer, whether a member or not, or for the purchase of literary material, whether or not written by a member.

26. The term "member" encompasses anyone admitted to the membership rolls of the Writers Guild of America, both West and East, and classified as either active or inactive, associate, withdrawn or suspended, whether in good standing or bad.

27. No member may be relieved of the responsibility for the payment of any fine, or from any disciplinary action resulting from any infraction of strike rules by offering his resignation from the Guild. Membership in any guild or union is not a voluntary association of parties but a binding contract between them which cannot be abrogated unilaterally by either party except under provisions of the Guild constitution or state or federal law. It should be noted that fines levied for infringement of strike rules are collectable in a suit at law.

28. The Guild shall have authority to assign and direct members in the performance of duties relating to

the strike including, but not limited to, picket duty. Any member found guilty of refusal to perform picket duty shall be fined not less than $100 per day for each day of such refusal to perform.

29. The following is excerpted from Article X, Paragraph A of the Guild Constitution and By Laws.

"Any member of the Guild who shall be found guilty, after a hearing conducted in accordance with the procedures herein prescribed, of any act or failure to act, or any conduct which is prejudicial to the welfare of the Guild, or any of its Branches . . . . or of failing to observe the Constitution and By-Laws of this Guild or any lawful order of the Council or of a Branch Board . . . may be suspended, declared not in good standing, expelled from membership in the Guild, be asked to resign or in lieu thereof, or in addition thereto, he may be censured, fined or otherwise disciplined."

30. No member shall work with any individual, including a writer-executive who has been suspended from Guild membership by reason of his violation of strike rules, or who has been found by the Council to have violated strike rules, in the event no disciplinary action was instituted against such person.

31. Enforcement of these rules may be delegated to such committee or committees as the Council may designate.

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
REGION 31

[Received Dec. 21, 1973]

Case No. 31-CB-1203-2

WRITERS GUILD OF AMERICA, WEST, INC.,

and

ASSOCIATION OF MOTION PICTURE AND TELEVISION PRODUCERS, INC.

Case No. 31-CB-1223

WRITERS GUILD OF AMERICA, WEST, INC.,

and

AMERICAN BROADCASTING COMPANIES, INC.;
COLUMBIA BROADCASTING SYSTEM, INC.;
NATIONAL BROADCASTING COMPANY, INC.

ANSWER TO SECOND CONSOLIDATED AMENDED COMPLAINT

Respondent answers the Second Consolidated Amended Complaint as follows:

1. Admits the allegations set forth in numbered paragraphs and sub-paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 11, 12 and 13(a), (b), (c) and (e).

2. Denies, generally and specifically, the allegations set forth in numbered paragraphs 13(d), 14, 15 and 16.

3. Answering paragraphs 9(a):

Admits that at all times material herein, the Association, through its employer-members, and American, Columbia and National, employed, and presently employ, persons in the classifications set forth in the paragraph;

Lacks knowledge as to whether all of such persons were and are members of Respondent in good standing but has supplied this information upon request at the

hearing with respect to each such person identified by the General Counsel.

Denies, generally and specifically, that these persons are supervisors of their respective employers within Section 2(11) of the Act;

Denies, generally and specifically, that such persons are representatives or potential or likely representatives for their respective employers for the purpose of collective bargaining or the adjustment of grievances within the meaning of Section 8(b)(1)(B) of the Act.

4. Admits the allegations set forth in paragraphs 10 (a), (b), (c), and (d), with the qualification that picket lines were established on March 4, 1973 and the further qualification that some, but not all, of the member-employers of the Association have been picketed at various times since March 4, 1973.

5. Answering sub-paragraphs 13(f) and (g):

Admits the allegations set forth in each of these sub-paragraphs with the following qualifications:

(a) By subsequent actions of the membership and Board of Directors of the Respondent the suspensions and expulsions of the named individuals were and are vacated and the fines set forth in these sub-paragraphs were substantially reduced in amount.

(b) The named individuals were subjected to disciplinary proceedings because they crossed Respondents picket lines without regard to the type of services or functions which said individuals claimed that they intended to perform for Respondents during the strike.

(c) Pursuant to constitutional powers vested in the Board of Directors of Respondent, said Board has stayed the collection of the reduced fines of each of the named individuals set forth in these sub-paragraphs and has offered to stay the processing of all other intra-union charges pending against all other members who occupy positions set forth in paragraph 9 of the Second Consolidated Amended Complaint. Such stay, by its terms, if accepted by the affected members, will remain in effect until a final decision is rendered by the Courts on the unfair labor practice charges which initiated the present unfair labor practice proceedings.

FIRST SEPARATE SPECIAL DEFENSE

By the terms and provisions of their respective collective bargaining agreements (described in paragraphs 8(a), (b) and (c) of the Second Consolidated Amended Complaint) the Employer charging parties have, through bona fide collective bargaining with the Guild, legally waived and given up any legal right they may have had or now claim to have to designate any of the members of the Guild as their representatives for the purpose of collective bargaining or the adjustment of grievances during the current strike.

SECOND SEPARATE SPECIAL DEFENSE

By the terms and provisions of their respective collective bargaining agreements, referred to above, the Employer charging parties have expressly agreed that members of the Guild, including members who may at the time of or during a strike be assigned supervisory duties, may respect the Guild's strike call, refuse to cross picket lines or perform any service during a strike and be subject to Guild discipline for crossing picket lines or working for struck employers during any strike such as the current one described in the Second Consolidated Amended Complaint.

THIRD SEPARATE SPECIAL DEFENSE

In accordance with grievance and arbitration provisions of it's collective bargaining agreements, on April 28, 1973 Respondent mailed written grievances and requests for arbitration to the Employer charging parties requesting a prompt arbitration of the legal and factual issues set forth in the First and Second Separate Special Defenses, set forth above. More particularly, the issues which the Guild seeks to arbitrate with the Association are stated as follows:

> "1. Whether by virtue of the provisions of said Agreement, and particularly Article 7, all contracts of members of the Guild with employer companies

as to whom the Guild is on strike have been suspended, including the contracts of all members no matter in what capacities they have been employed; and

2. Whether by virtue of the provisions of said Agreement, and particularly Article 7, the definition of writer, and other provisions, the Association and the Companies have waived the right to designate or select members of the Guild as representatives of employers for the purposes of collective bargaining or the adjustment of grievances and the right to complain of discipline threatened or imposed by the Guild on any of its members."

The issues which the Guild seeks to arbitrate with American, Columbia and National are identical except the contract section references differ as to the agreement referred to in paragraph 8(c) of the Second Consolidated Amended Complaint.

In view of the pendency of the above described arbitration proceedings, Respondent respectfully requests that the issues raised in the Second Consolidated Amended Complaint be deferred to arbitration and the Board retain jurisdiction pending the arbitral decision thereof.

Dated: Los Angeles, California
December 13, 1973

Respectfully submitted,

LEVY, VAN BOURG & HACKLER, ESQS.

By: /s/ Charles K. Hackler
CHARLES K. HACKLER

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss:
COUNTY OF LOS ANGELES)

I am a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is 3550 Wilshire Boulevard, Los Angeles, California. On December 19, 1973 I served the within Answer to Second Consolidated Amended Complaint on the following parties to this action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mails at 3550 Wilshire Blvd., Los Angeles, Ca. addressed as follows:

Honorable Sidney Barban
Administrative Law Judge
National Labor Relations Board
Division of Judges
1231 - 25th Street, N.W.
Washington, D.C. 20037

Harry J. Keaton, Esq.
Counsel for Charging Party
Mitchell, Silberberg & Knupp, Esqs.
1800 Century Park East
Los Angeles, California 90067

Larry A. Curtis, Esq.
Counsel for Charging Party
Musick, Peeler & Garrett, Esqs.
One Wilshire Blvd.
Los Angeles, Ca. 90017

Phillip R. LeVine, Esq.
Counsel for the General Counsel
National Labor Relations Board
Region 31
11000 Wilshire Blvd.
Los Angeles, California 90024

Richard N. Fisher, Esq.
Counsel for Charging Parties
O'Melveny & Myers, Esqs.
611 West Sixth Street
Los Angeles, California 90017

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on December 19, 1973 at Los Angeles, California.

/s/ Ellen Miller
ELLEN MILLER

BEFORE THE
NATIONAL LABOR RELATIONS BOARD

Thirty-First Region

Case No. 31-CB-1203-2

In the Matter of:

WRITERS GUILD OF AMERICA WEST, INC., RESPONDENT

and

ASSOCIATION OF MOTION PICTURE AND TELEVISION PRODUCERS, INC., CHARGING PARTY

Case No. 31-CB-1223

WRITERS GUILD OF AMERICA WEST, INC., RESPONDENT

and

AMERICAN BROADCASTING COMPANIES, INC.:
COLUMBIA BROADCASTING SYSTEM, INC.:
NATIONAL BROADCASTING COMPANY, INC.,
CHARGING PARTY

12th Floor, Federal Building
11000 Wilshire Boulevard
Los Angeles, California
Monday, May 21, 1973

The above-entitled matter came on for hearing, pursuant to Notice, at 10:00 o'clock a.m.

BEFORE:

HONORABLE SIDNEY J. BARBAN, Administrative Law Judge

[2] APPEARANCES:

PHILLIP R. LE VINE, ESQ.
11000 Wilshire Blvd., Los Angeles, Calif. 90024, appearing on behalf of the General Counsel.

CHARLES K. HACKLER and
GERALD GOLDMAN, ESQS.
Levy, VanBourg & Hackler, 3550 Wilshire Blvd., Los Angeles, Calif. 90010, appearing on behalf of the Respondent.

HARRY J. KEATON, ESQ.
Mitchell, Silberberg & Knupp, 1800 Century Park East, Los Angeles, Calif. 90067, appearing on behalf of the Charging Party, Association of Motion Picture and Television Producers, Inc.

DAVID G. MILLER, ESQ.
Loeb and Loeb, One Wilshire Building, Suite 1600, Wilshire, Blvd. at Grand Avenue, Los Angeles, Calif. 90017, appearing on behalf of the Charging Party, Association of Motion Picture and Television Producers, Inc.

RICHARD N. FISHER, ESQ.
O'Melveny & Myers, 611 W. Sixth Street, Los Angeles, Calif. 90017, appearing on behalf of the Charging Party, American Broadcasting Companies, Inc.; Columbia Broadcasting System, Inc.; National Broadcasting Company, Inc.

• • • •

[51] SHELDON M. MITTLEMAN

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. LeVine) Would you state your name for the record, please?
A Sheldon M. Mittleman.

Q And your address, please?
A 4123 Terry Brae, Tarzana, California.
Q All right.
Where are you employed?
A I am employed at Universal City by Universal City Studios, Inc., and MCA, Inc.; it is a parent corporation.

• • • •

[55] Q All right.
Could I ask you to go into a little bit more detail with respect to the sequence of how his duties—how the duties as a producer originate, and how it progresses through the development of the film?
A Well, first of all, an idea or concept has to be established.
In the case of a television series, it will be a series concept, and in the case of a theatrical motion picture, it will be an idea for a picture, or in the case of a television anthological picture, it will be an idea for a picture.
This can come from a number of different sources, a published novel or a published source.
Or it can be an idea which could be anywhere from a one-page idea to a complete script prepared and submitted by a writer to the studio.
But whatever the concept is, once a studio management determines that it is of sufficient interest to develop it, it is then assigned to a producer to develop.

• • • •

[56] The first step will normally and customarily be the preparation of a story or a treatment, indicating the full story, but usually not including dialogue.
This will be written by the writer under the supervision of a producer who may suggest changes, may suggest changes in direction, or approaches of the story.
When this story is completed, the producer along with other members of management, will then determine if the project is still a viable project, one that is interesting to that particular company to produce.
And then the next step will be triggered if that election to go forward is made.

And that step would be the writing of the full script, which would include the dialogue, the flushing out of the characters so that they are real people, rather than sketches.

It might include descriptions of the locale, etcetera.

• • • •

[58] And the producer in conjunction with the production department, which arranges for the physical production, will then proceed to prepare for the actual principal photography of a picture.

A number of areas are involved; the type of set to be used will the picture be produced on location? And who will be the subsidiary actors, what will be the additional staffing of the crews, the assistant directors?

And more important, who are the craft union employees who will be involved with the picture?

These are all selected at this point basically by the producer function, as you call it—the executive producer, the producer and the associate producer subject to the final approval or veto by management.

• • • •

[59] This includes the determination and selection of the composer and the approval of the music of that composer, and the determination of how large an orchestra will be used for the recording of the music, the determination of additional scenes—once the picture is put together, whether additional scenes are required, and whether it will require additional shooting.

• • • •

[60] Q All right.

When would an executive producer be involved in the production of the television film?

MR. GOLDMAN: I'm sorry. I couldn't hear that question.

JUDGE: Would you please read the question?

(Question read.)

THE WITNESS: If an executive producer is involved in a particular project, he will usually be involved at the very beginning.

His responsibility is to supervise from a management or executive level everything that is involved in connection with the production of a picture.

For example, he may not physically be on the set during production.

He will receive reports as to the progress of it. To put it in a slightly different context, he is sort of a staff rather than a line executive.

Q When would an associate producer be involved in the production of a film?

A Well, an associate producer would normally be involved in the later stages, usually, but not always.

He would not be involved in the initial creative process of the preparation of the script. That is usually the function more often of the producer and executive producer.

The associate producer is usually primarily involved in [61] the physical production of the picture and in the post-production areas; although this is not always the case.

There are many associate producers who do contribute in the preliminary creative writing stages also.

• • • •

Q (By Mr. LeVine) All right.

What function does a producer have in relation to dealing with employees?

A Well, I previously indicated what the physical problems are of the producer; that is, in terms of physical things, scripts, physical production.

And equally important area of responsibility of the producer is in relationship and dealings with the various personnel employed for or assigned to the production of the picture.

It is very common in the motion picture industry where [62] creative people are constantly meeting and working together to create a finished product that there will be differences in approach, differences in concept, differences in even the conception of the assignment or the responsibility or what they feel their responsibility is on a particular picture.

When there are these differences between the various people, it is the responsibility and function of the producer to resolve these differences, to make a determination as to whom among competing parties has the responsibility for a particular aspect of it.

Many times the disagreements may be jurisdictional in terms of the various labor organization jurisdictions, and other times the disagreement will be as a matter of creative approach.

Still other times it may be that something is simple and mundane as personality conflicts between people who must work together.

It is the function of the producer to iron out these problems, and to make the necessary accommodations so that all people assigned to the particular project can function in a way that management requires; that is, to produce and complete the finished motion picture as economically as possible.

Q. All right.

Could you tell me what the duties of a director would [63] be?

A Yes. The director is a person who assumes the primary responsibility for the principal photography phase of a motion picture.

• • • •

[67] Q (By Mr. LeVine) Is there a story editor function at Universal?

A person who would exercise—

A Many television series produced by Universal employ story editors. They are called by various names—story editor, story consultant, executive story consultant—but the function is generally the same—

Q Could you tell me what that function would be?

A Yes.

That is a person who generally is a professional writer who was involved in working with the producer and the writer of a particular script; in fact, the story editor would usually be assigned to the series and work on all of the scripts of the series.

And let me elaborate what I mean by "work on."

I mean he will meet with the writers—the individual writers who will be contemplated for hiring for the writing of the scripts, and will discuss with them their story ideas.

He will make recommendations to the producer and to management that a particular writer's idea is an idea that is desirable for that program, and that writer should be hired for that particular script.

If his recommendation is followed, and the writer is hired, then the story editor will then work with the writer, [68] make suggestion to the writer in the preparation of the script.

And when the script is delivered—and again if you recall, I stated that it is usually delivered in two steps: the story first and then the final teleplay—but at either of these steps, he may feel that the story is not just going to work out or be suitable for the particular project.

And if he so feels he will recommend to management that the employment of the particular writer be terminated at that step, and either another writer be brought in to complete the project, or that the particular script should be abandoned.

If the script is fully completed, he may also be involved—quite frequently is—in additional writing on the script.

He is as I say usually a writer, but he works on the particular series. And unlike most of the writers who write an individual script for the series, he is deemed by management to have an overall flavor of the series.

And from his point of view, it is not merely sufficient to have an excellent story and teleplay, or script; it is essential that the script conform to the basic concept of the series; that the continuing characters be consistent to the concept of the series.

And that is one of the functions that he is charged [69] with because he is a regular employee on that series as opposed to a casual one-time employment situation.

Q All right.

Does he have a function in dealing with employees who would work under him?

A The only employees generally that he would deal with—and when you say "working under him" I am not sure that is completely accurate—

Q Would he have authority over various people under him?

A He would work with and—this will vary—and I hesitate to say "direct" in order—but he would work with the writers who are writing the particular script.

And as a representative of management, he will instruct them that the story line should be developed in a certain particular way, or that certain dialogue is inappropriate for the characterization of a regular character, and would expect of course that the writer of the individual script would then carry out the suggestions.

It will vary from suggestion to instructions, from case to case.

Q Do problems arise in the story editor dealing with the various writers?

A Yes, quite frequently.

Q What types of problems would arise, to your knowledge?

A Well, the problems may be that the script that is being [70] written by the writer does not conform to the management concept of what is required for the particular series.

One of the functions of the story editor is to ensure that the writer writes in conformance with the series concept; this is not always possible.

There are many outstanding writers who don't have a particular flare for a particular series.

And as outstanding as they may be in other areas, they just can't write for it; this is one problem that comes up.

And the story editor in this case may have to give this kind of direction or instruction or explanation, or whatever, to the writer to make sure that the script comes up in this form.

There may be creative disagreements. The writer may feel that one way to approach a story is creatively valid and the story editor may disagree.

And the disagreement cannot be resolved between the two—more often than not, I believe it is—but it might then go up to the next step of management who will again make the determination as to whose approach is more appropriate.

I would think, and I believe, that more often than not, it is the story editor's approach that is finally selected as the approach to go because he is the one in constant contact with his superiors, and is familiar with the requirements for the particular series.

• • • •

[72] Q All right.

Now, do story editors participate with the producer or director and/or the director function in planning with respect to the production of the film?

A Yes. The story editor is considered as part of management, and his function—part of his function is to assure that the scripts that are produced are not merely creatively acceptable, but are economically acceptable.

He may have certain limitations within the concept and format of the series as to what kind of locations can or cannot be used.

The number of actors, for example, may be important for budgetary reasons.

He is involved in this determination, and at the same time must convey this decision to the writer of the particular script and to control the direction of the particular script so that that script will conform to the management decision.

• • • •

[74] Now, how do these contracts set out the way that these individuals will be paid?

A Well, as a result of the 1970 Writers Guild of America Minimum Basic Agreement, there is a requirement that all contracts entered into from that effective

date, must have compensation for writing services separately stated; and all contracts entered into on that date must conform to the collective bargaining agreement.

• • • •

[82] It is the producer's function—the executive producer, the producer, the associate producer, and story editor—along with other management that is in constant dealings with the network, that if they have a particular project, or a script that they want to produce they will attempt to convince the network which is the ultimate licensee—in fact, the ultimate buyer of the particular project—to proceed.

Since the network will have the veto power quite frequently, and just not approve a project and therefore, not license it, the key function of the producer is to convince the network to accept the project that he wants to produce.

Q All right.

Now, once it is determined that a project is economically feasible, or prior to that determination, is there a budget prepared for the individual project or series?

A Yes. In connection with the television series, there is usually a pre-existing—what is known as a "pattern [83] budget," which is a standard sample budget that will be followed for each and every picture of a series.

With anthological pictures there is also a pattern budget, depending upon the project.

And the particular picture—

MR. HACKLER: I am sorry. I didn't get that word. As to what type of picture?

THE WITNESS: Anthological pictures; that is pictures not with a continuing format or character.

There usually will be a pattern budget. When the script is prepared, the production department will then analyze that script to determine if it can be produced within the budget that pre-exists.

At this point, there may be considerations as to the casting of major performers and the director and so on. And these costs which can vary, are also taken into consideration.

The decision as to whether or not to produce the picture, is then made to a great extent, depending upon whether or not it is within the budget.

But on occasion, the producer along with management, may elect to produce a picture even though it is in excess of the pre-planned budget.

Q. Does the producer participate in that decision?

A Absolutely. He participates first of all in the [84] analysis of the project to determine if it can be produced for the budget.

He is one of the experts who is charged with the knowledge of the cost of production, which is one of his prime functions.

And he also participates in the final decision as to whether or not to produce it after the actual budget based upon the script and the other factors, have been determined.

• • • •

Q All right.

Now, the production of either a television episode or a motion picture, or any project, in that, is there [85] usually a shooting schedule—a time within which it is contemplated that production will be completed?

A Yes. The production department and the producer work out what is known as a shooting schedule, where the script is divided or broken down scene by scene, and the order of shooting, the principal photography—is set out scene by scene and day by day.

So that ahead of time unless there are unforseen events which occur, the producer will know how long the picture will take to be produced—physically produced.

And he will also be in a position to determine if the picture is budgeted at to excessive a price, which scene should be cut, where actors need not be employed, where crews can be switched around, where stages can be utilized as existing stages rather than new stages built.

Q And who makes those decisions?

A Basically, the producer makes those decisions.

Q All right.

• • • •

[88] If it is one that has substantial ramifications either creatively or financially, the executive producer will be called in for a final decision.

• • • •

[89] Q Well, let's say during the production of a television series, a supporting actor wants some time off, or an actor, and—wants half a day off?

A Well, normally that person would go either to the director or producer or both, and they would then determine whether or not that person could be spared, or whether or not that person's services were required.

Or whether or not production could be rescheduled.

And the actor would then be advised "Yes, you may take the time off," or "No, you can't because we will need you and it is essential. Can you not change your other plans to a different time?"

• • • •

[90] THE WITNESS: It contains the additional names—the additional three names that I was asked about: Stephen Heilpern, Leonard Kaufman and Frank Pierson.

MR. MILLER: We are trying to pinpoint the time that they were functioning in these capacities, your Honor.

THE WITNESS: Generally, that is correct. In one case, Frank Pierson—you said as of February 1?

Q (By Mr. Miller) As of February 1, 1973.

A I believe at that point, Frank Pierson was doing a rewrite on a theatrical picture.

As of approximately the 20th of February or thereafter, [91] he was functioning as the producer of that picture in connection with pre-production activities.

• • • •

[108] I think I understand. In other words, coming from the bargaining table, you or Mr. Sheinberg, or whomever happened to be attending, would discuss with him what impact certain things might have on—

A I discussed it with Mr. Sheinberg and Mr. Price; Mr. Sheinberg did not attend any of the meetings.

Q I see.

But you were talking to him in his capacity as you described before, of the impact of possible changes in the agreement?

A Right. Upon management.

Q All right.

Now, while we are on him, he is a senior vice-president of Universal TV.

Is that—that is the title given to him here?

A I believe that is his title, yes.

Q And I gather from your testimony, that he is an executive capacity, rather than a staff or line capacity?

A That is right.

Q And others report to him, but he is not primarily out producing a motion picture?

A That is correct.

[161] JUDGE: And what would the story editor do with respect to the script that was submitted to him by the script writer?

THE WITNESS: He is in conjunction with the producer, or the associate producer, or the executive producer, or all three of those, would decide whether or not they wish to employ the writer to do a complete script based upon the writer's idea or work.

If the decision were made to employ the writer, he would then supervise the writer, work with the writer, give the writer direction, and make sure that the writer is writing for the mood and the particular series of particular concept that is required.

In fact, he would really be the closest supervisor of the free lance writer's work.

The free lance writer would do the actual writing at this point. And the story editor and the script supervisor would discuss the writing with him and make sure that the writing is progressing because there are time problems involved.

The scripts have to be delivered within a certain period of time in order for production to take place. And they would instruct the writer as to any revisions that might be required.

• • • •

[164] REDIRECT EXAMINATION

Q (By Mr. LeVine) Where did you acquire your knowledge as to the functions of the various supervisory-type employees that you discussed on direct?

A In general the 14 years in the motion picture and television industry.

I have been involved as I testified before, in collective bargaining negotiations since 1966 on a regular basis.

At Screen Gems I was, as I also testified, studio counsel. And as such sat in on all the regular executive meetings which were held weekly, at which were present the head of the Business Affairs Department, the head of the Production Department and of the Casting Department, the head of the Post-Production Department, and the Studio Counsel.

And the studio problems—the production problems—of the past week were discussed and the potential problems in the future were discussed.

At Universal I have been involved in the collective bargaining and Guild Agreement area quite extensively.

And whenever any problems arise in this area, I am contacted either by the Labor Relations Department, whose expertise is primarily in the Craft Union and not in the so-called Talent Union agreements, which are the Directors Guild, the [165] Producers Guild and Screen Actors Guild agreements, and whenever there are any problems on particular programs, the producer or the executive producer, or the executive in charge, or occasionally the story editor or the associate producer, will contact me directly and ak me for advice.

Q All right.

From your personal knowledge, can you give an example of a producer handling a grievance involving a writer?

A Yes. A situation came up last year with a producer on this list, as a matter of fact: Paul Mason, who was producer of the series "MacMillan and Wife".

A dispute arose as to whether or not a writing commitment has been made to a free lance writer.

That dispute was taken to the producer, Paul Mason; it was not resolved at that level. The writer in making the claim and the producer had exactly contrary views as to whether or not a legal commitment had been made.

It was referred to me, and eventually wound up in the conciliation procedures of the Writers Guild; because Mr. Mason and I were unable to resolve it to the satisfaction of the individual writer and the Writers Guild.

Q Was Mr. Mason at that time on loan out?

A He was.

Q To Barsu; is that the name of the company?

A Yes.

[165] Q All right.

And did the producer make the initial decision in that situation?

A Yes. The producer made the initial determination on behalf of the company that a writing commitment had not been made, and conveyed that decision to the writer and his agent.

And that then triggered the Guild conciliation procedures on the basis of the rejection of the claim by the producer.

* * * *

[167] Q (By Mr. LeVine) All right.

Now, can you tell me, Mr. Mittleman, whether producers who are on distant locations from Universal, participate in the negotiations with labor organizations at the site of the production?

MR. GOLDMAN: I object.

I don't know what the definition of "distant locations" is. I think it is unintelligible. I think it is improper redirect.

JUDGE: Please read the question.

(Question read.)

MR. Keaton: Your Honor, if I may, Mr. Hackler opened that very line of questioning when he asked this gentleman whether producers and directors participate in labor negotiations.

He went into this for quite a while.

JUDGE: Gentlemen, I had the reporter read back the [168] question.

The objection to it is overruled.

I will take the answer.

THE WITNESS: Where a production occurs involving the use of labor represented by a labor organization with whom the particular studio does not then have a collective bargaining agreement and where therefore, an accommodation with the local union is required for that particular project it is quite common for the producer or associate producer to negotiate an interim short-term agreement—or it could be long-term, but usually short-term—for the particular production.

Q And how would that arise? What type of situation would that be?

A If the picture were shooting on location and there might be a local Teamsters' Union involved or a local Laborers' Union.

The conditions of employment—the minimum salaries, the minimum hours, seniority, layoff rights, grievance procedures—anything of this nature.

• • • •

[177] Q All right.

So we are clear on what you are talking about, the complaint that was made was by the free lance writer, that Paul Mason had made a written or oral commitment to employ, and he hadn't been paid?

A No. The complaint was that Universal City Studios, Inc., had made a commitment to him.

Q Through Mason? He was complaining that Mason —against Mason.

And Mason said "I didn't make the commitment." Is that correct?

A That is correct, as I recall it, yes.

Q So Mason's participation in that grievance, which was a grievance of a guy contending that he has been engaged as a free-lance writer, was to say, "I didn't engage you," and he was supported by management and it went to the Guild and the grievance procedures?

A That is correct.

• • • •

[196] MR. LE VINE: As our next witness, we will call Bernard Barron.

Whereupon,

BERNARD BARRON

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

• • • •

[198] Q All right.

And what are the duties of an executive producer—or, the producing function at Twentieth Century?

A The producer is the chief executive in relation to a film project.

It is his store, so to speak, and he runs the show in relation to a specific film project, whether it be a feature film or a television series.

Q All right.

And could you go into some detail as to the specific duties that a—of the producer function?

[199] A Okay.

I can break it down probably into about five principal categories.

The initial conception is category one; the planning is the second phase; and execution for the third phase.

And then there is completion, and finally exploitation.

In other words, from the beginning of the concept of the film or television series, through all these steps necessary to plan it, and then all through all the steps involved in the physical production of the film.

And finally into the finishing portion of the film which we call traditionally in our industry, the post-production phase.

And finally through the distribution and exploitation of that project; the producer has the supervisory and an overriding responsibility for that entire project.

Q All right.

Could you tell us, starting with the initiation of the idea, how he functions and what his duty is, and responsibilities are?

A Well, it varies, of course. If you are talking about a theatrical motion picture as opposed to a television series, one way or another, the initial idea or the original idea surfaces; whether the producer thinks of this idea himself, or in a sense creates it, or whether he hires someone to create [200] it under his supervision, or whether he purchases an existing idea, or an existing concept.

The producer, in a sense, acquires it. And he begins to involve himself in the negotiations, financial and otherwise, to bring it into a viable state of life.

Once there is a deal set with a production company, such as ours, the producer then has the responsibility of fully developing that idea to the point where it can be approved as a going project.

That involves perhaps hiring a writer or supervising the services of writers, or perhaps providing those services on his own to create a script, which is similar perhaps to a blueprint in construction.

• • • •

[201] And once it is approved, again it is the producer's responsibility to begin to set the gain plan into motion; that is, to hire in the necessary people to make this come to life.

• • • •

[202] It is his responsibility to select the composer, the conductor, and to make those creative determinations as to the style of the music involved, as to the amount of music and where it is necessarily going to be in the film, the editorial style of the film; to provide for the personnel necessary to complete the picture.

And if it is a motion picture, the producer then finally has a responsibility as to the exploitation and sale of that picture; to make provisions for all of the things that he has to do in terms of contributing to the successful exploitation of the picture.

If it is a television series, he has an ongoing responsibility to the network, for example, in relation to their promotion and exploitation.

So I look at it as being a five-step process from conception to exploitation.

Q All right.

And could you tell me what the difference between an executive producer, a producer, and an associate producer would be at Twentieth Century?

A Yes. An executive producer is very simply a man who [203] supervises one or more producers.

The producer we have just discussed, I hope that was sufficient, and the associate producer, is sort of like an assistant general manager, if you will accept the concept that the producer is a general manager.

The associate producer generally speaking is an extension of the producer in order to complement him in areas where he doesn't have either by background or training, all the experience or expertise he would like.

Q All right.

Would this be substantially the same with other companies, to your knowledge?

A As far as I know, it is substantially the same throughout the industry.

Q Now, with respect to the producer function, what is their function in dealing with employees as they work on the production?

A Well, the producer is the boss, so that he will select the people and hire them.

He will terminate them and see to it that they have the facilities and equipment that they need.

He will supervise their jobs to the extent that they are doing what they are supposed to be doing in the way that they are expected to do it.

And he is to perform all the other functions that a [204] boss is likely to perform; if there are disputes he will solve them and if there are complaints, he will attend to them, and if there are requirements, he will examine them.

Q All right.

You mentioned that they handle problems as they arise in the production; could you give us some examples of problems that arise with employees that would be dealt with by the producer function?

A I can give you a personal example of one that happened. My wife is an actress, and on a show called "Bonanza" she was performing in the role of a trapeze artist.

That was her assignment as an actress.

And she had the principal role as the female in the show, and she was to do all the dialogue.

The high wire work—the business of climbing the ladder and going on the high wire—was to have been done by a double; because she is not trained to do that, and it is pretty dangerous work.

And the second day into production on the set, the director instructed her to start to climb the rope.

And she said to him, "I am not going to do it, and I don't have to do it."

And he said, "We are running out of time and we don't have time for the double to come in, and I want you to climb the rope."

[205] And she refused and she went to the producer and told him her problem.

And he agreed with her and told the director to use the double.

• • • •

And that involves the handling of the actors, the placement of the camera, the direction of the crews, the utilization of the sets and wardrobes and makeup and all the physical elements relative to the production in front of the camera.

Q Does the director participate in the hiring or recommendation of hiring of any of the production personnel who work on the set?

A I am not really sure what you mean by production personnel.

Are you talking about crews?

[206] Q Crews.

A Well, the director obviously is a very important members of the creative force of that film.

And the director's desires are going to be of a paramount interest.

If the director, for example, has a cameraman who he has worked with in the past and who whom he has a preference for, unless there is some reason that that cameraman would not be employable, the director probably would get his request.

And if he would say, "yes, I want that cameraman," he would get him.

He certainly has a tremendous influence over the decisions relative to the members of the cast; particularly, in secondary parts.

• • • •

[207] Q All right.

And during the daily production on the set, when the director is in charge, who sets the hours that they will work?

A Well, you are talking about several different groups of people.

They may be set by several different people.

The director works very closely with a unit manager, and production manager on the show. The director will —at the outset when the plan is first determined, the director in concert with the producer and the production staff, will [208] determine what the schedule of the picture is going to be, how many days it is to shoot, and how many hours each day, and what is to be done each day, and things of that sort.

Once that plan is established and a budget is generated in response to that plan, very little in the way of deviation is permitted without a great deal of discussion and additional decisions to be made.

• • • •

[209] Q All right.

And could you tell me what the story editor, or executive story editor function is?

A At our studio, we don't have either. We have only two people in that category, and they are called "executive story consultants."

But it is my understanding that generally throughout the industry, the functions of all these people are identical.

They are—they have the responsibility on a day-to-day basis for acquiring and developing the scripts necessary in relation to an ongoing television series.

Specifically, they supervise the writers' functions.

Q Could you describe the nature of the duties of the story editor function?

[210] A Initially the story editor will prepare for his producer, a list of available writers who are suitable to the project.

He will discuss with the producer each of these people on his available list as to whether or not this individual or that would be the most desirable.

He will conduct interviews with the writers, will participate in all the stories that they place, and participate in the decisions that are made in relation to the story and teleplay.

And once those decisions are made, he will supervise the writers who have been assigned to see to it that the stories and the teleplays come in consistent with the goals of the operation.

Q And who participates in the decision with him?

A Well, almost all creative decisions are made as kind of a group effort, particularly in this area.

You have a conference that will take place with the executive producer, if there is one, the producer, the associate producer, and the story editor and frequently the writer, at which a discussion will take place relative to the merits, the costs and the values of a particular story.

And it isn't always easy to tell you who makes that decision because it is a give and take kind of discussion. But at the end of that discussion, a decision is made.

[211] And it is a participatory decision for the most part.

The responsibility for that decision however rests with the producer and the executive producer, if there is one.

Q All right.

But what I actually meant by that, the decision to select a writer?

A Oh, all right.

Who makes the decision?

Q Who makes the decision?

A Yes.

Q Would a story editor?

A It is conceivable that for the most part, it is a producer who makes that decision.

Q Is the producer alone?

A Well, very rarely are any of these kind of decisions made alone.

Q All right.

A Generally speaking, they are the result of a discussion or a conference.

Q And does the story editor have a function in dealing with employees as they work under him?

A Well, he has to—again, as I said, he supervises the writer, so that he will assign—make assignments to the writers.

He will discuss their projects with them.

[212] When the story is turned in, he will analyze and meet with the writer and instruct the writer as to what is wanted, what is good, what is bad, what needs to be rejected, what needs to be strengthened, what has to be sharpened up, and what has to be eliminated.

He will supervise the writer; and those of the employees that he has contact with.

Q All right.

And does he make any recommendations with respect to the termination of writers?

A Yes. Decidedly he does.

Q Could you give us the circumstances?

A Well, we find particularly in television, that some of the top writers have a tendency to accept more commitments than they are able to handle, really.

And every now and then you find that you are getting into a bind, having made a commitment to a writer whom you know is going to be unable to deliver in time,

because he has too many other commitments that he is favoring.

And because we operate on a very restricted time schedule in television, we have commitments and air dates with the network that we have to meet.

It is not infrequent that the story editor will come into his producer and say, "Look, I know we have got a commitment with—" so and so "—but I would like to get a [213] script from him. But I know what he is doing over at Warners and I know what he is doing over at Columbia, and there is no way that we are going to get that script in time, and we had better dump him and go to somebody else quick or else we are not going to be on the air with that show."

• • • •

[216] Go ahead.

MR. GOLDMAN: Larry Peerce—

JUDGE: You are on a different page now?

MR. GOLDMAN: No. I am on the same page.

JUDGE: Oh. I see.

MR. GOLDMAN: These are the names that I skipped over on the page, and I want to make it sure that it is clear on the record that we didn't inadvertently leave them out.

And we left them out for a reason, and that is that they are not members.

Our records do not show that they are members.

JUDGE: All right.

MR. GOLDMAN: Larry Peerce, Steward Rosenberg, Stephen Spielberg, David Lange and John Kubichan.

JUDGE: All right.

• • • •

[230] THE WITNESS: May I have the question again?

Q (By Mr. Keaton) If you don't mind, I will rephrase it.

A All right.

Q In your experience—based upon your experience, Mr. Barron, if a producer were to be disciplined along the lines described in Rule 30, which you have read a

moment ago, would it have any effect on his effectiveness of the producer to your company, and if so, what would be the effect?

A Well, it would certainly be totally destructive to the producer's effectiveness.

Q Would you explain that answer?

[231] A If I may take it back a little bit. Okay.

The producer's—among the—producer's principal responsibilities are the overall supervision of the tastes and creative judgments that are necessary in the production of either a theatrical motion picture film or a television series.

The producer must meet with and discuss with and supervise the writers who are hired.

And equally as important, the producer has to be able to attract the top writers to his series.

We are in a fiercely competitive business, and in any kind of business venture, there is only a handful of top people.

There is an awul lot of middle ground people and there is a handful of people at the lower end of the scale.

That company which wishes to and needs to succeed has to be in a position to attract the very top writers possible. And to the extent that the producer would not be permitted to deal with those writers, and would be dishonored among them, and would be subject to sanctions of their Guild, his ability to attract those writers would be totally destroyed.

We would in a sense have a producer with no television series to produce.

Q All right.

You mentioned earlier that in the creative area on a [232] television or theatrical production, a great deal is done by management committees.

Now, relating specifically to such things as hiring casts, employing writers and employing the key below the line elements such as cameraman and head wardrobe person, and so on, or possibly the head of makeup, would you describe to us who is on this kind of team, and how this team reaches a decision?

A Well, the way in which the team—I will answer part two first.

The way in which a creative team reaches a decision is still a mystery to all of us. We have been unable to solve that problem.

But generally speaking, you are talking about what we call the production executive group, which would be the executive producer, if there is one, the producer, the associate producer, the director, and very often the production manager or the unit manager.

These people together sit down and discuss in either one meeting or a series of meetings the various alternatives that are available to them in each of these classifications.

When you talk about a wardrobe head, for example, the kind of considerations that have to be taken into account are, number one, how much of a creative input is required on this particular show.

[233] Number two, do the creative inputs available from a person "X" satisfy the needs of our show?

Number three, how expensive is he?

Number four, how expensive is he to work with?

In other words, he may not charge you very much per week, but his way of operating may push your budget right out the window, and on down the line.

Can he be trusted to comply with our schedule and get the work in on time?

Number six is: is he reliable, etcetera, etcetera, etcetera.

And all the various members each of whom in this discussion would have something to contribute, either having worked with this person in the past, or having had a financial calamity with him on some other program, or what have you, all of them put their information together and discuss it out.

And somehow or other, a decision is elicited as a result of that meeting.

The same thing would hold true, of course, in relation to casting of principal actors.

And always it is done under the supervision of the top "Joe" who is the producer.

When you have a determination to be made for the selection of a writer on a television series, is there a [234] similar team operating, and if so, what does it consist of—who does it consist of?

A Yes. To understand a little bit more, if I can flush it out a little bit more.

Q Please do.

A Because there is a need to deliver a new television program each week to the network those people whose services take longer than a week to perform, have to be supplemented by additional people.

In other words, a director, for example, needs some time to prepare. Then he needs a week to shoot and then he needs some time afterwards in the post-production area.

So it isn't possible to use one director for all the episodes that you have to deliver, just as it isn't possible to use one writer for all the episodes that you have to deliver.

Sometimes the writer will take four to six to eight weeks to deliver a script for a one-week show.

So that generally speaking there are ongoing conversations throughout the course of the production of a television series as to additional people who become available and to evaluate their availability and their desirability, and ongoing decisions are made throughout the course of the series.

Hopefully, somewhere near the beginning you can lock in, [235] if you will, on a team—five, six or seven writers who you can continue to repeat throughout the year and two or three or four directors who you can continue to recycle throughout the year.

And once those decisions are made, if it isn't necessary to move off of that spot, those decisions don't have to be made any longer.

Q All right.

I think from there, I would like to go to the basic question that I was asking—

A I am sorry.

Q —and a team makes the selection of that team?

A Well, it would be essentially the same team, except not including the director.

So that woud be the executive producer, the producer, the associate producer and probably the production man.

Q Would this story editor or story consultant play any part in that?

A Yes. I think he would.

Q All right.

Can you tell us whether directors perform any function in handling grievances?

A Constantly.

Q Could you give us some examples?

A Yes; because problems are coming up all the time on the [236] set.

And the boss on the set is the director. And when a problem comes up, it is brought to him.

The question as to whether or not somebody had a call at 7:00 or at 7:30, or whether or not they are to be permitted to leave the stage at 4:30 or 5:30.

Any of those disputes whether—whatever it is, whether it is connected with the physical production of the film on the stage the boss is the director and all those complaints, grievances and problems are brought to him.

Q All right.

Now, who, if anyone, makes an initial determination of disputes about credits amongst the five, six or seven writers that you might have in a TV series?

A Who—let me have the question again.

Q There is sometimes a dispute about screen credit of various writers; is that correct?

A That is correct, yes.

Q All right.

Who makes the initial determination of that kind of dispute?

A Generally speaking, on a feature film, it would be the producer. On a television series, it would be the producer, and the story editor.

And they would then submit a tentative list of credits [237] to the Writers Guild.

Q What happens if the Guild disagrees with that determination?

A Well, I don't know—the Guild has to approve it. But anyone of the writers could also dispute it, at which point they have an opportunity to arbitrate it before the Guild's Credits Committee.

• • • •

[CROSS EXAMINATION]

[238] I notice on this list that was supplied to us as of a few days ago, that we have the capacity listed, for example, for Gerald DiPego "writer/associate producer."

I take it that is a different capacity other than a straight associate producer?

A No. The definition of an associate producer as I attempted earlier, Jerry, was somebody who will perform as an extension of the producer, to supplement the producer in areas where his expertise or his background isn't—doesn't have all the strength that he woud like it to have.

In this case—in the case of Jerry DiPego, he brings creative inputs at the decision level that his producer is not able to perform.

And so he has been hired in both as the writer and as an associate producer to supplement those areas.

Q In other words, he complements the producer?

A He complements the producer.

Q He can perform—he can engage in activities that a producer is unable to engage in, such as a writing function?

A Or unwilling and not having the time—

Q Such as the writing function—polishes, touch-ups?

A Yes, certainly.

• • • •

[240] JUDGE: Mr. Goldman, do you want to repeat the question, please?

MR. GOLDMAN: Yes. Well, could I have the question read?

(Question read.)

Q (By Mr. Goldman) As I understand it, you do have categories of employment of straight out producers?

A Absolutely.

Q All right. And directors?

A Absolutely.

Q You also, do you not, have employment categories of writer/directors?

A Yes.

Q Or writer/director?

A We employ people who are capable of performing in more than one category.

Q All right.

[241] Now, not every director is also a writer/director?

A Absolutely not.

Q All right.

Not every producer is a writer/producer?

A Right.

Q And not every producer is also a director and not every director is a producer or a writer?

A That is true.

Q So some people can function in all three? For example,—

A Stewart Rosenberg.

Q Ernest Lehman, writer/producer/director?

A Yes.

Q And some people when they function in all three, don't function in all three on one specific project, but might be a writer on one project and a director on the next, and a producer on another.

Is that correct.

A Yes.

Q All right.

Now, the creativity of these individuals that we are dealing with, from their employment at Twentieth Century-Fox, they might be called to direct a particular portion of a particular program one week, and then writer a particular portion of a different program that next week.

Is that correct?

[242] A May I have that again?

Q With these creative talents that you have at Twentieth Century-Fox, will you get it to a writer/

director, he might be employed in the capacity of a writer one week for a particular program, and then the next week on an altogether different program, he might be employed as a writer.

Is that correct?

A Theoretically, it is possible—

Q Isn't that correct?

A Yes, it is possible. It rarely if ever happens quite that way, but it certainly is possible.

Q Or the reversal? One week a writer and the next week a director?

A Yes. That is also possible.

Q Now, I would like to get in the area of producer. Isn't it more so that you find writers being a "hyphenate" as it used in the area of producer as opposed to director?

A Well, the hyphenate is, you know, something that causes a lot of people trouble.

And all it really means is someone who can perform in two different capacities.

The most common hyphenate in our industry has nothing whatsoever to do with the writers. It is the actor/director, that is typified by Jerry Lewis or Gene Kelly.

It is the most common kind of hyphenated situation that [243] we find.

In television, however, because of the exigencies of the form of television, because of the fact that a number of different writers have to be employed in relation to one ongoing series, and because of the fact that all of the different writers have to write to a set of established standards, the character can't change from week to week.

His relationship cannot change from week to week.

He can't be dead this week and alive again the next week.

And particularly, on a new series that is not yet been on the air where you may have 9, 10 or 12 episodes being written before anyone has seen it, perhaps being written by as many as seven or eight different writers, someone at the top has to be the unifying force; has to have the ability to take a script that is turned in two days before production and himself change it so it conforms to the overall concept of the show, so that it is consistent both from the creative standpoint and from a story standpoint.

And because of that, because of the pure confinement of the way in which television episodes are made, writers frequently find that they have been able because of their ability to show abilities over and above and beyond those of a writer—they find that they have been elevated to the producer function in television.

• • • •

[244] And what he is doing as a producer in television, as you have just described, is taking the finished product that another writer has given to him under a term contract and he is changing it to fit the outline as set forth by the production company.

Like for example, the 12 episodes that were written before one is aired?

A Yes. They are not really finished products when they come from the writers. They are not finished until they have been polished by the producer.

Q Or polished by a writer?

A Well—but that function is the producer's function at that point. That is not the writer's function.

• • • •

[248] Q All right.

I just want to get something straight for the record. I thought earlier in the testimony Mr. Barron, you stated that the term "executive story—I think Mr. Mittleman testified that there was a story editor and an executive story editor, and I believe you stated that you don't use that terminology—

A Yes. He is an executive story consultant.

Q Executive story consultant?

A Yes.

Q And what is the other one?

A That is the only one we use in that category.

Q All right.

Does the executive—with your familiarity with the industry, does the executive story consultant—is he the same as the story editor and the executive story editor?

A That is correct.

Q They perform the same function?

A They perform the very same function.

• • • •

[REDIRECT EXAMINATION]

[250] (By Mr. Fisher) Mr. Barron, you testified that producers perform at various times writing functions, as for example, polishing and so on, when they do so, are they acting as producers, or as writers?

A They are acting as producers. That is part of the producer's function.

Q All right.

And would you explain that answer a little bit? Is there anything more to say about it?

A Well, there really is not any more to say about it. [251] One of the requirements of being a producer and one of the elements involved in performing the producer's job is to make those kinds of changes that we describe traditionally in our industry as "A through H up to a polish," which is the terminology, I guess, that comes out of the 1970 Writers Guild Agreement.

Q So called incidental writing services?

A Incidental writing services, which have been carved out and which have been identified as the province of the production executive group.

Q Which would include?

A The executive producer, the producer, the associate producer, the director and story editor.

And one of the requirements of being a producer and one of the capabilities that the producer must fulfill is to take the creative material that has been delivered to him by the writer, and alter it in such a way to the extent that he is permitted to to make it more acceptable.

Q All right.

And then you earlier testified that many of your producers and directors are not Guild members, to your knowledge?

A A great many of them are not.

Q Are these same functions performed by them?

A Absolutely.

• • • •

[252] And the same would be true with these other categories named; is that correct?

THE WITNESS: They perform exactly the same way.

• • • •

[RECROSS EXAMINATION]

[253] Q (By Mr. Goldman) I would like to ask you this, Mr. [254] Barron: when you are referring to the witer/producer, you are not referring to a producer who normally and only performs the A through H categories, but you are referring to somebody who does more work in the field of creative writing?

A That is absolutely true.

• • • •

[REDIRECT EXAMINATION]

[255] Q And in those instances where you have hired a man as a producer/writer or writer/producer, whichever, when he is serving as a producer, dies he at that time sometimes also perform functions as a writer?

A Yes.

• • • •

[260] MR. LE VINE: Yes, sir.

We will call Sid Sheinberg.

Whereupon,

SID SHEINBERG

was called as a witness by and on behalf of the General Counsel, and having been first duly sworn, was examined and testified as follows:

DIRECT-EXAMINATION

• • • •

[262] Is this a complete answer?

Q Are you familiar with the term "Prime Time"?

A Yes, sir.

Q And could you define what Prime Time is?

A Prime Time—

Q In the television industry?

A Prime Time is a phrase which has historically denoted that period of the evening when the largest numbers of television sets are being used in the country.

That period of time over the years has undergone what I would describe as some slight modification in terms of exactly when it starts.

But I think it would be generally conceded that it is that period of time that starts somewhere between—

somewhere around 7:30 and ends at 11:00, and possibly it starts [263] earlier on Sundays.

Q All right.

How many hours of prime time are there generally available in the industry?

Is there a common figure that is generally denoted as prime time?

A At this time due to the application of the so-called prime time access rule, there might be some ambiguity in the sense that the networks program prime time from 8:00 to 11:00 during the week, and program prime time either from 7:30 to 10:30, or from 8:00 to 11:00 even on Sunday.

So the number of hours of prime time would be the sum of those hours.

Q All right.

Is there a common figure that is used in the industry as prime time for the entire week?

A I imagine that you would say it is 63 hours.

• • • •

[264] JUDGE: Well, Mr. Goldman, let's not take too much time on it.

At this point in the testimony, Mr. LeVine is apparently trying to establish the weight to be given to this witness's testimony, presumably with respect to any events effecting his organization that he might testify about.

It is preliminary; I will overrule the objection.

Q (By Mr. LeVine) All right.

Could you answer the question, please?

A At this present time, Universal Television produces or is part of a production entity which produces approximately 13½ hours of national network prime time television.

Q All right.

And, to your knowledge, does any other studio produce that many hours of prime time television?

A No, it does not.

• • • •

[268] A Well, the recommendations and decisions with regard to all or substantially all so-called above-the-line

personnel and participation, and the selection or approval of many key below-the-line personnel would be all encompassed within the producer's responsibilities and function.

Q All right.

And could you describe what "above-the-line" and "below-the-line" means?

A Yes. The term above-the-line—the terms above-the-line and below-the-line refer to where certain functions appear on a—have historically appeared on a formal budget which has been used historically in the motion picture industry; and typically, the producers, the directors, the writers, the right conveyers, these personnel and the cost of these elements in personnel typically appear above at double line or—on this budget, hence the phrase "above-the-line."

Q All right.

Are talent personnel above the line?

A I didn't mention talent personnel? I should have. The cast—I use the term, and I think that is what you mean—the term cast, of course, is above the line.

Sometimes there are other personnel that are sometimes above the line and sometimes not. Musicians, for example,— [269] I believe some companies treat them as above-the-line personnel and some companies treat them as below-the-line personnel.

Of course, everyone else connected with the production of a motion picture or television series who doesn't appear above the line, would appear below the line.

• • • •

[270] Q All right.

[271] And does he have the primary responsibility to attempt to resolve the problem?

A When you say "he"—

Q The producer function?

A —these problems arise with associate producers, who they try to get the problem resolved in some instance, or with the producer; and it is the responsibiity with this entire group to try to get the problem resolved.

And absent crisis proportions their responsibility is total responsibility.

• • • •

[273] Does he recommend the hiring of any of the people who participate in the actual filming of the production?

[274] A Do you mean to restrict that question to the cast or broader?

Q To any of the people who are involved in that.

A Yes. I would say that generally speaking,—and there again I don't believe that anything that here said will apply to all directors in connection with all projects, and their relationships with all producers at all times, and do not want to convey that impression—but generally speaking, he would participate in the selection of the cast and "participate" may be even a weak word—make strong recommendations for approval of the producers as to who the cast would be.

And he would participate in revisions of the script, including recommendations as to writers to do rewrite in many cases.

• • • •

Q All right.

And do problems arise in the area of the filming?

A Yes. Problems do arise in filming.

Q All right.

And whose responsibility is it to resolve the problems with employees during the filming?

[275] A Certainly a problem that arises during—when you say "filming," may I interpret that as meaning at least in the case of film—principal photography in this instance?

Q With respect to the director's function?

A Yes.

Generally speaking, the director would have the responsibility for adjusting those kind of problems that would arise in the filming—in the photography of the film.

Problems such as between self and the cameraman or between himself and the performers who have been engaged, or with the performers with each other.

And in some cases it is between the performers and the material, or the writer, who may also be sitting there.

Q All right.

Could you tell me what the story editor function or executive story editor function would be at Universal?

A Yes. The story editor function—and the phrase unfortunately today in the industry has a number of substantially identical phrases which mean the same thing, ranging from story consultant to executive story consultant and various other titles dependent upon vanity, negotiations and whatever—and this function generally would mean the function of dealing with the preparation of literary material by the writers, directing and controlling the work of the writers, suggesting directions and modifications in their [276] work, recommending the termination of the engagement of the writers.

We would conceive of them as production executives in the generic sense whose primary responsibility is the preparation of the material.

• • • •

[280] CROSS-EXAMINATION

• • • •

[285] We are not presently engaged in the business of producing programs in the United States for non-prime time other than that, and other than in the instances of so-called motion [286] pictures for television, which we do produce with some frequency.

Q All right.

Mr. Sheinberg, are all producers, executive producers and associate producers, required by your company to perform writing functions?

A No.

Q Are some producers, executive producers and associate producers required to perform writing functions?

A Sometimes.

Q All right.

When a producer, executive producer and associate producer is required to perform a writing function, did he

have to come under the Writers Guild Basic Agreement for 1970?

MR. KEATON: Objection.

It is asking for a legal conclusion. The Writers Guild contract speaks for itself.

Furthermore, it is also immaterial.

MR. GOLDMAN: I will withdraw that question.

Q (By Mr. Goldman) All right.

Are you familiar with personal service contracts of executive producers, producers and associate producers?

A The actual contracts—the legal documents?

Q No. Not the actual ones, but the basic contents of the [287] documents?

A In a general way.

Let me amplify my answer. I would say I have a general familiarity with the "deals" as distinguished from the specific familiarity with the "deals" or the contracts.

Q All right.

If a producer, executive producer, or associate producer is required to perform a writing function, to your knowledge, do you know if that producer, executive producer, or associate producer is required to have a personal service contract setting forth the fee to be paid for his writing services separate and apart from his other services?

MR. LE VINE: Your Honor, I would object to that question as going beyond the scope of direct with this witness.

JUDGE: Mr. LeVine, that is not an objection that I normally sustain, since I believe every witness may be cross-examined as to any matter that is relevant or material to the issues in the case.

And—

MR. LE VINE: Your Honor, may I interject at this point?

The Respondent intends to call this witness as their own witness at a future time.

And we offer today to let them go through everything that they wanted with this witness while they had him on the [288] stand.

• • • •

[289] I think your Honor without giving away our side of the case, that it is quite evident through the opening statement of Mr. Hackler the first day of this trial, that the writer—a professional writer is a unique character.

That there are certain creative functions that go on with the writer, and there are certain people that can write and certain that can't write.

And that what we are trying to show, is that this activity—the writing functions as such—that all the cases that the Board has with respect to supervisors, do not really fit this case.

This is sui generis; this is in and of itself a "new breed of cat."

We feel that we can show this, and we feel that—I feel it is proper to ask this type of question to show it.

MR. KEATON: May I be heard, your Honor?

JUDGE: Just a moment.

All right. Be specific with respect to your question.

• • • •

[296] Q (By Mr. Goldman) All right.

Mr. Sheinberg, are you familiar with the collective bargaining agreement between the Writers Guild of America and the AMPTP and the networks which cover the writers' functions?

A Generally.

Q All right.

And when I am talking about the writing functions, I am talking about those functions which are not included in the A through H group which are included in the definition of writer.

• • • •

[297] Mr. Goldman's question.

Which contract are you referring to, Mr. Goldman?

MR. GOLDMAN: The blue book.

MR. LE VINE: He read both, however.

JUDGE: All right.

Let the witness have a copy of the blue book, which I think is General Counsel's Exhibit 2, and if you will be so kind as to give me a copy—

MR. GOLDMAN: Can we taken a two-minute recess so Mr. Sheinberg can read that, and become familiar with that?

JUDGE: All right.

But I am not going off the record.

We will just sit here until he tells me he read it.

MR. GOLDMAN: May I smoke a cigarette, your Honor?

JUDGE: Gentlemen, in order to give you a recess for smoking, we will resume punctually at 10 minutes past 11:00 by that wall clock.

(Short recess taken.)

JUDGE: On the record.

Before going any further, I would like the witness to [298] identify for the record, those pages in the—in General Counsel's Exhibit 2, which he has read during the recess.

THE WITNESS: I have read Article 1, Sub-Section C-1, and I read that—

JUDGE: That is on page 7?

THE WITNESS: Page 7.

JUDGE: Did you continue reading over through page 8?

THE WITNESS: I read page 8 until I got to the last two paragraphs, which didn't seem pertinent to the question.

JUDGE: All right.

What other pages?

THE WITNESS: And I read page 53, Sub-Paragraph B of Article 14, just the first sub-paragraph.

JUDGE: All right.

Mr. Goldman, if you will proceed?

Q (By Mr. Goldman) All right.

Now, Mr. Sheinberg, when I refer to writing functions, I will be referring to those functions that you have just read in the collective bargaining agreement; do you understand that?

A I understand what you are saying.

• • • •

[299] Q (By Mr. Goldman) Yes. With respect to writing functions required of producers, executive producers and associate producers—

A Who are professional writers?

Q Who are professional writers, and who are described in that collective bargaining agreement, when a producer, executive producer, or associate producer perform services described in that collective bargaining agreement, as writing services, is there a requirement for a separate paragraph in his personal service contract or a separate personal service contract covering those specific writing functions?

MR. KEATON: I am going to object again upon the grounds that the answer to the question is found in the document. The witness is being asked to state a legal conclusion.

[300] And—

JUDGE: Just a moment. I think the problem, Mr. Goldman, is your use of the word "requirement."

MR. KEATON: That is exactly right.

JUDGE: It is required by whom and in what circumstances?

If required by the contract, then the objection is correct.

MR. GOLDMAN: I will leave out the word "requirement."

Q (By Mr. Goldman) All right.

I will ask you, is there normally a separate personal service contract covering those writing functions?

A Yes.

Q Well, as I understand it, Mr. Sheinberg, not all producers, executive producers or associate producers perform writing functions covered under that collective bargaining agreement; is that correct?

A That is right.

Q All right.

Now, those producers that do not perform writing functions under that collective bargaining agreement, in what respect is their function and duty as a producer different from the producer who performs writing functions under that collective bargaining agreement?

A In an instance when the latter producer is also writing, [301] or generally?

Q Generally.

A None.

Q When this producer is writing—take your second category—what is the difference in duties and functions and responsibilities?

A At the risk of a simplistic answer, when the producer is writing, he is performing writing services.

And he may or many not during the course of the performance—I don't want to say during the course—during the period of his performance of those writing services, also be performing services of a producing nature of a sort identical to those that might be performed by someone who is not a writer, or not rendering writing services, or he may not, depending upon his work habits, the evigencies of the moment, and a variety of other factors.

In the simpelst sense, he might either be at home at a typewriter doing nothing but writing during that period of time, or he might be at the studio or at home producing the series and intermittently writing also in the performance of the so-called writing services to which the second group of persons—I'm beginning to not even to understand myself—he is performing writing services.

And he might even be writing concurrently with the producing or he might not be writing concurrently with the [302] producing.

Q All right.

In other words, as I understand it, you describe the producer's duties—and when I say "producer" I am talking about the gambit of producers—the executive producer, the producer and associate producer.

A Right.

Q That he—which I call straight producer.

A Okay.

Q And not the hyphenate.

A Not the hyphenate?

A Not the hyphenate; that he is involved in the selection of the writer.

And that as the production function is the complete responsibility from the beginning to the end of that

product. And I believe Mr. Barron, from Twentieth Century-Fox, described it as a five-step approach, one from the initial conception; two, the planning; three, the execution; four, to the finishing, which is post-production; and five, to the exploitation, which is actually the selling of it.

That is what the producer is involved in; is that correct?

A Yes. I would say that is correct.

Q All right.

When you have a writer/producer, in addition to those [303] responsibilities which I have described as—just before the five-step approach that Mr. Barron analyzed for us, he performs an additional duty, and that is of writing; is that correct?

A When he is "writing" or when he is "producing"?

Q A writer/producer?

A Well, I think you are confused in this sense; the fact that he is a writer/producer does not affect his producing services any more than if he were a lawyer/producer, or Jewish producer.

If he is writing, it doesn't make any difference that he is a producer at the time or is not a hyphenate; he will be writing with regard to those services.

Q Yes.

A May I finish?

Q Yes.

A If the question really is: does a writer/producer of the garden variety that you have reference to, perform services as in the run-of-the-mill producing world—is it different from a producer who is not a writer?

And the answer to that question is no.

Q All right.

You describe—you said earlier that a writer/producer when he is hired on as a writer/producer, for a given product, that concomittant with his producing function, he is also [304] doing his writing function, and that there are times when—

A I did not say that.

Q Well, is that not true?

A No. It would only be true if he—it is a truism. If he is performing—if he is writing, he is in fact, writing.

MR. KEATON: Your Honor, I would like to renew my objection.

I think we have had enough of this to show how irrelevant and immaterial this is.

JUDGE: No. I'm going to overrule that.

There is a distinction that will have to emerge on that point.

Q (By Mr. Goldman) The writer/producer, when he is involved in a production—the one through five steps, and is actually involved in the writing function of that production, he cannot do both at once;—is that correct?

A No—

Q He cannot do both the writing function and the producing function at the same time?

A That is not correct.

Q That is not corect? He can do both?

A Some can, yes.

Q Some can?

A Some can and some can't.

[305] Q He can do the producing function and the writing function at the same time?

A Yes.

I would offer an analogy to drafting a contract and trying the lawsuit.

Q Yes. But you can't be drafting the contract while you are trying the lawsuit.

You do it after or in between or at breaks in the lawsuit; is that what you are trying to analogize into?

A No. It is my opinion that if a lawsuit were to go on for a period of 12 weeks.

Let's say that that is the period of time that might be involved in the production of an episode of a television series.

That during that period of 12 weeks a producer who also has within his bag of tricks, as it were, the ability to write, and as a writer, that he might within that period of 12 weeks, also render writing services.

He might write a book, a screen play—what I am suggesting is that similarly a lawyer who is in the process of trying a lawsuit, which takes a period of 12 weeks, if he happens also to be a draftsman, might be able to write a contract.

Obviously, he couldn't do it in open court during the process of it, but he could do it intermittently.

[306] And—

MR. GOLDMAN: Exactly.

THE WITNESS: —or otherwise, he might be reading a magazine or something.

Q (By Mr. Goldman) All right.

So in other words, if I understand it correctly, that the writer/producer does the writing work also while he is doing the producing work, but not necessarily at the same time?

A No. Some people who are producing, and have within their skills, writing, might during the period of time, also do writing services.

Q For that production?

A Not necessarily for that production. As a matter of fact, obviously he cannot be writing for that production when the production is finished, for example, even though he would still be producing.

Q But he could be performing writing functions for that project or other projects?

A It is possible that he could be during the calendar period of time performing such services for that or another project.

• • • •

[311] MR. LE VINE: Yes. We will call David Victor to the stand, please.

Whereupon,

DAVID VICTOR

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

• • • •

[312] Q Could you tell me what your duties are as an executive producer?

A Well, I supervise the production of all the series that I am involved with.

And in addition to that, I have a series of specials called "Portrait."

And I'm also involved in movies of the week and also creating pilots for ABC.

Q All right.

And could you tell me specifically what you do as an [313] executive producer?

A Well, I supervise all the aspects of production, of course, several layers removed from day-to-day producing, because there are a number of shows that I oversee.

I hire producers. I hire directors. In a sense, through my associates, I hire and fire writers.

I also supervise the budgets. I also go down the set in case there is a crises and try to solve those.

Q All right.

You mentioned that you solve crises on the set. Could you describe the nature of the problems that arise that you personally would deal with?

A Well, if they show an episode is really in trouble and going far behind in its schedule and budget, I try to do something about that.

• • • •

[314] A Oh, yes. I try to be the court of last resort; I try to stay out of the day-to-day problems and really move in when it becomes important that I do.

But there have been examples of that.

Q All right.

And could you describe the types of—

A Well, I wasn't in here before, but I think many times there are tempermental problems—disagreements creatively between director and the camerman, or one or the other threatens to walk off the set.

And that type of problem arises, and hopefully not too often, because I am a good producer and I try to keep them to a minimum.

Q All right.

And could you tell us some other types of probems that arise?

A Well, in some instances, I suppose my story edi-

tor may have a disagreement with a writer who is employed, and in some way I try to make peace there.

I try to solve that particular kind of problem.

• • • •

[315] Q (By Mr. LeVine) It was agreed between Counsel for the General Counsel and Counsel for Respondent that David Victor, executive producer, was told by Allen Griffis on the telephone—

MR. KEATON: What date?

MR. LE VINE: I believe that it was on April 10th that it would be brought up on disciplinary charges, and the strike rules would indicate the extent of the discipline if he closed the picket line.

JUDGE: You are proposing that as a stipulation?

MR. LE VINE: Yes. It—is that—

MR. GOLDMAN: Yes. I so stipulate.

JUDGE: It that acceptable to both of the Charging Parties? Mr. Keaton?

MR. KEATON: Yes, your Honor.

JUDGE: Mr. Fisher?

MR. FISHER: Yes, sir.

JUDGE: All right.

[316] The stipulation is accepted.

• • • •

[320] Q And you as an executive producer—do you engage in any writing functions?

A No.

Q Are you in the process of creating pilots for ABC?

A No. The only creative writing I have done in my 14 years as a producer and executive producer—I have never written a teleplay—I was responsible one way or another [321] for six story credits during the 14 years.

And two of them eventuated in creating credit for Marcus Welby, M.D. and Owen Marshall.

That is the only writing I have done in 14 years.

Q All right.

And when you create pilots for ABC, you don't do any writing?

A I supervise, unless as I say, when I create it, it goes through all the steps.

I write out a format of the characters and send a copy of it to the Writers Guild.

Then it is up to them whether I get separation of rights.

Q All right.

In 14 years as a producer, have you polished any scripts?

A A minimal amount as I understand I am about to do under Section A through H.

I have not written any single scenes or any pages of any kind.

Q Is it your testimony that you have only done A through H writing?

A That is right.

Q As set forth in the contract?

A Except for the few story lines that I have explained, in which I received credit on the screen.

[322] Q When you are doing the creation of the pilots for ABC, you are doing the A through H categories?

A I work with other writers in the creation of the pilot; I supervise their writing.

Q All right.

You don't perform any writing?

A Unless, as I say, I become a co-creator or a creator, in which case, it goes through all the steps of my writing out a format, a list of characters in the original story, which goes to the Writers Guild.

Q With respect to movies of the week for NBC, do you perform any writing functions?

A I supervise the writers.

Q Supervise the writers?

A Supervise the writers in the capacity of A through H, nothing else.

Q And with respect to Griff, which will be starring Loren Green, have you written any scripts for that?

A No, sir.

Q All right.

Are you presently doing A through H writing functions for Griff?

A There are no Griff scripts.

Q All right.

Now, are you doing A through H writing on either Marcus [323] Welby or Owen Marshall?

A We have no scripts yet on Owen Marshall, and the only work we are doing on Marcus Welby is that there are half a dozen scripts left over from the previous four years.

We have been in production for four years.

And with those I only do supervisory A through H work.

• • • •

Q All right.

[324] Now, what is the nature of the services that you are compensated in that areement between Universal City Studios, Inc., and Groverton Productions, Ltd.?

A In the years that I have been with Universal, these are only producing or executive producing functions.

• • • •

[325] Q All right.

Now, how long have you been under this loan-out agreement with Universal through Groverton?

A I believe it is four years.

Q And in the four years that you were involved in this situation, did you ever perform any writing functions?

A Except in a supervisory capacity, A through H, none, except for the couple of incidents which I have told you about.

• • • •

[330] MR LE VINE: We will call John Epstein, please.

Whereupon,

JOHN EPSTEIN

Was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

• • • •

[331] Q All right.

And do you recommend the hiring of any persons involved with the production of the film?

A Yes.

Q And could you tell me how that comes about and who you would recommend?

A In various areas I am involved in—in almost mostly involved in the hiring of writers, the hiring of directors, the choice made in the hiring of the actors; and in some aspects, I am involved in the elements of the production crew.

Some of that is done by the Production Department at [332] Universal, and some of it is done in concert with the producer.

Q All right.

Do you recommend the hiring of writers?

A Yes.

Q All right.

In the course of your duties as a producer, do grievances or problems arise in the production of the films?

A Yes.

Q Could you tell me the types of grievances that arise that come to your attention?

A There have been some earlier references to the kind of things I get involved with when Mr. Victor described certain aspects of his supervisorial areas.

Mine are more on a day-to-day basis. And I try to keep them from the executives and handle them myself.

When they get out of hand, they go higher.

They can be as basic as director problems with elements of the crew, as happened on Owen Marshall last season when we had two directors who were unable really to work with members of the camera department.

We have had occasion where actors are unhappy with scenes, or unhappy with their lack of scenes; sometimes an assistant director is unhappy because they can't reach actors because actors don't have telephones.

[333] And also, the constant problem areas of making a film.

Q All right.

And could you give me some examples of the type of specific problems that arise with respect to actors?

A Well, I think I just did. In one case, we have an actor who changes his phone number, and the assistant director was not advised.

And the assistant director tried to call him for an 8:00 call on a given morning and couldn't find him.

So what do you do when you can't find him after? You call the producer.

And I tried to settle that problem for future, and not only to find the actor, but to make sure that he indeed had an exchange, which most actors have in this town, and that kind of thing.

We have—one of our lead actors was unhappy with the amount of—the percentage, let's say, of scenes he had in certain given episodes.

I spent a great deal of time dealing with that—dealing with him, placating and explaining, and relating to that problem.

Q All right.

And do grievances ever arise with, say stunt men?

A Sometimes. They can arise with anybody. Our series is conceived so there is very little stunt work.

[334] I have been involved in the other kinds of series, not at Universal, and grievances are constantly arising with stunt men.

And the production manager is supposed to deal with that—with the stunt men.

And when he is unable to, he will ask our producer.

MR. GOLDMAN: Excuse me, your Honor.

I am going to have to object to the answer as being non-responsive to the question.

Number one, we are bringing in the aspect of the production manager, which I believe is in a different union altogether.

He is not even affiliated with the producer, assistant producer or executive producer.

And the answer doesn't relate to Owen Marshall as it was asked.

THE WITNESS: The question was—

JUDGE: Just a minute.

THE WITNESS: I am sorry.

JUDGE: Well, the question basically, as I remember it, or understood it, had to do with the function of the producer.

And I think the witness stated, if I am correct, Mr. Goldman, that if the production manager could not handle the grievance, that he next took it to the witness as a [335] producer.

And that would be the—this seems to me to be relevant.

MR. GOLDMAN: Well, you must look to what he said I think, sir, in the fact that he has been the producer here on this program for approximately two years.

He is talking about other employment elsewhere.

JUDGE: I'm going to overrule the objection.

The status of the producer generally in the industry as well as this particular producer, is a matter I am going to have to deal with.

It may be a matter of weight.

If it is a long time ago and in a different situation, then I might not give it any weight.

Go ahead, Mr. LeVine.

MR. LE VINE: I believe he answered the question.

Q (By Mr. LeVine) Do grievances ever arise with respect to writers, with respect to the determination of credits?

A On occasion.

Q And who makes the initial determination of credits?

A I believe—I don't recall a specific case of this in the last season, but I believe in a case like that, we put a name on the script that we, as a unit, feel is the name that belongs on this script, and that it goes to the Writers Guild.

[336] And then the Writers Guild mediates it just as a normal procedure.

I believe that is the way it works; I can't vouch for that.

Q All right.

And could you tell me who the unit is that you have referred to?

A The unit is usually myself, the story consultant and conceivably the executive producer.

• • • •

[339] Q (By Mr. Miller) Mr. Epstein, how long have you been a member of the Writers Guild?

A Around 15 years.

Q All right.

And when was the last time that you received a writing credit?

Do you recall?

A 1963.

• • • •

[340] MR KEATON: Excuse me. Not on whether he voted, but whether he was allowed to vote.

MR. GOLDMAN: I don't think that was the question.

JUDGE: The question, as I am putting it to the witness, is whether he voted on the adoption of the strike rules.

THE WITNESS: I did not, your Honor.

JUDGE: All right.

Mr. Miller, do you have a question?

MR. MILLER: Yes.

Q (By Mr. Miller) Is it your understanding that you would have been allowed to vote on the strike rules?

A It is my understanding that I would not have been allowed to vote on strike rules.

• • • •

[343] CROSS-EXAMINATION

Q (By Mr. Goldman) All right.

• • • •

[344] Q All right.

Now, you testified on direct that when you were producer in the past, that you had been involved in the problem of stunt men?

A On occasion.

Q Could you give us how long ago that occurred?

[345] A Yes.

I would say the bulk of it occurred around 1966-'67

when I was doing a series that was heavily involved with the stunts.

Q In which company were you doing it for?

A The Mirisch Company.

Q And that was "Rat Patrol," is that right?

A That is correct.

• • • •

JUDGE: Overruled.

THE WITNESS: I pay dues. I don't know how voluntarily it is.

As a member of the Guild, it is part of what I am committed to do. I never questioned it.

• • • •

[346] The objection is overruled.

THE WITNESS: I believe the question was: why do I maintain membership in the Writers Guild?

Q (By Mr. LeVine) Yes.

A Well, I have many reasons as to why. I have stated in my affidavit, but I would be happy to enlarge on it or put it into the record—

JUDGE: Now, Mr. Epstein, you were asked "why."

THE WITNESS: All right.

[347] I never knew I was able to get out. It was my impression that I was unable to get out, one, and secondly, I felt that there was a moral obligation that I had, because when I did the little bit of writing that I did 10 and more years ago, I did write for scales that had been arrived at and fought for by the Writers Guild in previous years.

And I felt that I had that kind of a moral obligation to maintain and continue to pay dues to an organization that had indeed fought for those scales.

And in addition to that, I saw no reason to get out, because I wanted to keep my opportunity—if I ever wanted to write again, to be able to write again.

I guess that answers it as far as I am concerned.

Q All right.

Now, I believe you said in your affidavit—and correct

me if I am wrong—"I wish to keep my options open if I should eventually either create a series or perform other work within the Writers Guild jurisdiction?"

A I think that is a fair statement.

You have it in front of you and I don't; so—

Q So that you would receive the remuneration that the Writers Guild negotiates for.

Is that correct?

A In those areas, yes.

• • • •

[349] Q Did you vote?

A No.

Q Did you attempt to vote, or did you just walk into the meeting and sit down?

A I did not vote.

Q All right.

Mr. Epstein, what does a story consultant do?

MR. LE VINE: Your Honor, I would object to that question.

I think it goes beyond the scope of the direct examination of this witness.

MR. GOLDMAN: Well—

JUDGE: The witness mentioned story consultant in his direct testimony.

MR. GOLDMAN: Not only that, your Honor, but we have his affidavit here, and—

JUDGE: Well, that may not be the answer. The reason I am overruling the objection is that it was opened up.

MR. GOLDMAN: Fine.

THE WITNESS: Story consultant works with writers, supervises the preparation of writing material, does rewrites [350] and polishes?

I can't speak for all, but I would assume that is generally a correct statement in all areas.

Q All right.

Now, in your affidavit I believe you stated that you when working with the executive story consultant, supervised his work—his work with writers?

A That is correct.

Q So you in turn supervised the executive story consultant?

A That is correct.

Q All right.

What is the manner of supervision that you engage in? What do you do?

A Generally I meet with the story consultant before he meets with the writer.

We have an exchange of ideas. And obviously at various stages of the development of a piece of material, whether it be an outline or a draft of a screenplay, we have an exchange of ideas.

I tell him what I feel is wrong with the piece. And I tell him in general how I feel it should go, and be corrected etcetera.

And we have in essence, to use a general term, a meeting for 20 minutes, in which he then goes and translates [351] into a meeting with the writer for two hours so that I am free to do other things.

If I am needed in the meeting, which is often the case, the story consultant calls me and asks me to participate in that dialogue.

Q All right.

Now, if I understand what takes place—and correct me if I am wrong—you have, as the producer, the initial blueprint, so to speak, of the—now, we are talking about a series, are we not?

A In my case, yes.

Q You have the initial blueprint of the series.

And it is your function to make sure that there is a continuity in the series, and as was testified to earlier, that the star doesn't become dead in one episode and resurrected in another.

This is the type of information that you supply to the executive story consultant.

Is that correct?

A No. It is much more specific than that.

Q All right.

A It generally has to do with the dramatic values in the script, and the bad dialogue in my judgment, because ultimately the buck has to stop somewhere, and I judge the material.

[352] And I deal with it for what it is and tell them what I think is wrong with it. And generally speaking, I make suggestions as to how to cure it.

Q To the executive story consultant?

A Yes.

Q Who, in turn, is delegated by you then to speak to the writers?

A That is correct.

Q All right.

Now, assuming you have a term writer who has handed in the script, and his term has expired—he is cut and paid for the script—and your story consultant now has it as a finished product?

How do you handle that problem, when there is a finding by you that the dialogue is bad?

A We have the same conversation—or a similar conversation that I had with the story consultant. And then the story consultant, who is under contract, does what we agree on.

Q All right.

And that would entail possibly rewriting part of the script?

A In varying degrees, I would say that is correct.

Q All right.

And when you don't have a term writer, or his term has [353] not expired, he can be asked to perform those functions?

A Within the structure of the regulations agreed with the Guild, yes.

Q Yes.

A Definitely.

Q All right.

How—other than what you have just described, in what manner and how does an executive story consultant supervise the creative part of the writing function of a writer?

A I think, to take it from the original steps, he has early meetings with the writer, and has an exchange of ideas that are eventually brought to the producer with a request to proceed.

And it is the producer's function to grant that request, deal with the material that he is talking about, or whatever—

Q Can you give us some examples of that?

A Suppose a writer comes in and talks to the executive story consulant, discusses an idea that they work with together?

They come into my office—

Q Now, at that point, the writer has already been hired, has he not?

A In some cases.

Q Or a deal made or a commitment made with the writer?

[354] A Yes, but not in every case. But often in cases, yes, and there is no—in other words, writers can come in and pitch ideas, as I understand—as I recall—without having a prior deal made.

They can pitch an idea and we can make a deal. That happens, too.

But to talk about your step; let's talk about an outline. They talk about an outline, they may exchange ideas, and when they are through exchanging ideas, they come to me and tell me what their recommendations are and how to proceed with the material at hand.

And maybe it differs from some of the things that I have talked about with the story consultant, and then we agree generally speaking.

Q All right.

Now, let's assume that you have that first step, where you have the story consultant talking to the writers.

The story consultant is talking to the writer, and his initials talks to him are based on outlines set forth by you as to what you want to have in the series?

A Based on general formulas, yes.

Q Based on general formulas?

A Yes.

Q All right.

And then he gets together with the writer and describes [355] these general formulas to that writer, and then the writer takes it from there and tries to create something within the framework of that general formula.

Is that correct?

A Not exactly, but more exactly, the writers are generally well informed about what the intent is of the series before they come in; so that that initial meeting that you have described "go out and come back" doesn't always take place.

Sometimes a writer can come in and say, "What do you want in the series?"

And they have that conversation. And then he goes out and comes back with some ideas.

Q All right.

Now, when he comes back with some ideas, who does he come back to?

A He comes back, generally speaking—and this is in my series and I don't know that every series works that way—

Q Yes.

A —he comes to the executive story consultant.

Q And what happens at that point?

A They exchange ideas, sometimes for 10 minutes and sometimes for two hours.

And then they come to me and pitch what they have settled on. Often I agree with them.

[356] I then go to my executive producer.

• • • •

[360] Q All right.

Now, once you have the script, what happens? Now, the writer has been paid for his services, and he could be doing something else, what happens?

A I believe there is a period of time where we get back to the writer, and we are entitled to a revision.

So that step takes place.

Q All right.

A And that is always as a result of an exchange of ideas between me and the story consultant.

When the writer finally turns that revision in, and is paid off, and whether it be in one check or two checks, I don't know, but he is paid off and his work is essentially [361] finished, I would say.

And any changes that we want to make are made by the story consultant on staff.

• • • •

[REDIRECT EXAMINATION]

[367] Q (By Mr. Keaton) Did you attend this meeting at the Guild's offices or the board room on February 15th, 1973?

A Yes.

Q All right.

How many people approximately were there if you recall?

A I would say somewhere in the vicinity of 100 to 130 or 40, something like that.

Q Do you know many of them?

A Yes.

Q What kind of capacities did these people hold in their employment, if you know?

A I would say mostly in producer/writer capacity.

Q Were there some director-writers there also whom you knew?

• • • •

[369] Q Who presided at that meeting, if anyone?

[370] A Well, I never got the impression that any specific individual presided as I recall it.

Q Were any officials of the Guild present whom you know?

A Yes. There was Guild representation. I don't know Mr. Franklin, but if that was Mr. Franklin who was sitting next to Mr. Goldman—

Q You mean earlier this morning?

A Yes.

Q That was Mr. Franklin.

A Then I would say that he was there. And I believe that was the meeting that Mr. Hackler attended to answer any questions of—that were asked by the hyphenates—that were anticipated of being asked by the hyphenates in terms of jurisdiction.

• • • •

[371] Q All right.

Now, this was not the meeting at which the strike rules were voted on.

Is that right—none of these you have now described?

A No. I don't think the strike rules were voted at anything other than the general membership meeting of the Writers Guild.

• • • •

[375] Q (By Mr. Keaton) Was anything said by Mr. Franklin at that meeting, if you recall, concerning whether or not the proposed strike rules would be applicable to producers or directors?

A I believe the answer to that is yes there were; the meetings begin to run together in my mind in terms of the general membership meeting and that meeting.

I would have to say in answer to your question, the best of my recollection, yes.

Q All right.

And was anything said about whether the strike rules would be applicable to the persons—the hyphenate persons [376] at the meeting—only in their writing capacities or any capacity in which they might be serving for the struck employers?

A At all times when that subject came up in all of the meetings, it was made very clear by the members of the Guild Board that attended that all writers in any capacity were prohibited from crossing lines and going to work in any capacity.

Q All right.

And the persons who made these statements, you said, were members of the Board.

Can you identify some of them by name?

A I know that Michael Franklin made that statement. I believe there were others that made it; I'm certain there were others that made it whose identity I didn't know.

• • • •

[385] Mr. LeVine, you have to develop that through testimony.

Whereupon,

MELVIN SATTLER

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

• • • •

[389] And that writer will go to work following the concept that the producer has given him along the lines that he wants that script written.

And will work very closely with that writer.

And depending upon the producer and the writer, and the personalities involved, that writer may write in the producer's office—an office alongside—and be in constant consultation or he may deliver so many pages.

And then they will be in constant consultation with each other until development of that script reaches its climax in accordance with the arrangements that they have made.

If they made an arrangement for a treatment, the treatment will be delivered, the producer will go over it, and if he is satisfied with it, and wants to take the next step with that writer, he will sit down and discuss the matter with the writer, what direction he wants him to go and ask the writer to proceed along those lines in connection with creating the first draft screen play or final screen play, depending upon the situation.

• • • •

[390] Also, in the meanwhile, he will have to be thinking about a director. And he will interview directors that he thinks that he would like to have direct this project.

And he will finally come across a director who in concept agrees with the producers concept, or they may come together and amalgamate both their concepts.

He hires the director. He will supervise the directors' activities up to a particular point.

He will consult with the director and business executives that are involved with respect to casting, all within the budget, of course.

I mean, the producer had to have his script budgeted, and [391] he would work very closely with the Budgeting Department as to cost of the picture and whether or not it was feasible.

And in the event the budget is slightly high, and he didn't intend to make a picture at that price, he may go back to the writer and ask the writer to make certain revisions and changes with respect to scenes that will either cut down the cost of the picture or, maybe, that could be eliminated.

• • • •

[392] You have to select music, hire the composer, have the picture underscored, and actually bring the picture to the point where it can be ready for release.

In the meantime, he is also in consultation with the advertising and publicity department.

This is on a consultation basis, where he is giving the advertising and publicity department his views and his thought in connection with how the picture should be advertised.

And the advertising department will bring him sets of ads for his suggestion and sometimes approval.

And, basically, that is what a producer does. He is instrumental in hiring personnel that is involved, and if necessary, causing their discharge or discharging them.

Q All right.

You mentioned in your testimony that the producer will [393] deal with certain problems that arise in the production of the film.

Could you describe the types of problems that arise from your personal knowledge?

A From my personal knowledge? Well, just recently, I won't give you the name of the photoplay or the name of the individual—but the director notified the producer that he was very unhappy with the cameraman that had been hired on this particular picture.

He wasn't getting what he needed in connection with his concept and with respect to the type of shots that he wanted, and the type of staging that he wanted from the camera angle.

And he stated that he was very unhappy and wanted to consult with the producer about it in order to satisfy and alleviate the problem and replace the cameraman.

And we did eventually get what we wanted. That is one of the problems.

If a picture should be going over budget, that would be the biggest concern probably to the producer; as he is directly responsible to the business front office.

And he is going to find out why that picture is going over budget and what can be done about it. And obviously if it's going over budget, it could be because they are going over schedule, and he would find out what the reason for going [394] over schedule is because going over schedule is money.

Or if there is some—or if there is not a harmonious cohesive working crew and element going on along with the actors and directors and any other matter that can be occurring on the stage that can be holding up the situation.

• • • •

[395] Q All right.

Now, could I ask you if the director will recommend that any type of person be hired?

A Yes, generally—and I might say more than just generally.

In most of the cases a director will have a certain cameraman he would like to work with. And he will recommend that this cameraman be hired.

And his recommendation will—unless the cameraman's deal at that time is so outrageous that it wouldn't fit the budget—but assuming that it fits the budget, that cameraman will be employed because of his recommendation.

Q Do problems arise on the actual set in the shooting of the film?

A Oh, yes. Actors can blow their lines or become temperamental.

[396] And a director is quite instrumental from a psychological standpoint of putting the actors in the proper mood, keeping them in a state where they can perform their duties as they should.

And if these problems come up, the director will probably be the first one to try to settle that matter and to placate the individual.

If he can't or if he needs help, he will go to the producer, and he will give him help.

From a technical standpoint, problems will arise with respect to either his key grip or his cameraman, or his

—any other person who is handling the function in connection with the production, then the director will immediately step in and probably instruct his first assistant either to have that man do it "this way," or if he can't, to replace him.

• • • •

[397] MR. LE VINE: Our next witness, your Honor, is Herman Saunders.

Whereupon,

HERMAN SAUNDERS

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

• • • •

[399] Q And what are your duties as an executive producer?

A Supervising all areas of the producing or the production of Adam 12, and naturally a little bit above the actual producing chores because I am a producer.

Q All right.

And could you tell me specifically what you do?

A Checking the scripts, the ideas for the scripts, and when in production, all phases of the production.

I naturally am told by the producer whom he has in mind for writers, directors, crew, cast and everything which has to do with the production.

And then I also get very strongly into the post-production areas.

And I carry it to its extreme finish.

Q All right.

When your producer tells you he would like to hire as a writer or a director, or crew, who makes the decision as to whether or not that person would be hired?

A I do.

Q All right.

Do problems arise in the production of Adam 12?

A Frequently.

Q And as part of your duties, do you resolve those problems?

A Whenever possible.

[400] Q Do problems arise with respect to employees who are working under you in Adam 12?

A Yes.

Q Do grievances arise with respect to the employees?

A Yes.

Q All right.

Could you describe the type of grievances that come to your attention?

A Anything which has to do with a problem on the set will eventually get to me.

One of the first—one that was brought up today, as I remember, was problems between directors and cameramen; and that is one of the often found problems.

It can be something even when an extra feels that he is being underpaid for a particular piece of work that he has done and demands extra compensation.

And that will eventually get to me.

Conflicts such as an art director having his set completed to his satisfaction and then feeling that the set decorator hasn't done a good job on the set, and coming to me and saying, "We have got to get this straightened out."

Q Do problems arise with actors with grievances?

A Yes.

Q All right.

[401] Can you give us an example?

A It can be actors not liking what they are doing in terms of action.

They may not like what the director is telling them to do.

And we have a technical advisor—a sergeant from the Los Angeles Police Department. And it may be something that is inconsequential as his telling them they must wear their caps while they are running after a suspect.

Q All right.

And do actors ever complain about their dressing rooms?

A Oh, often. That is indigenous—

Q And would that problem come to you?

A Yes, it does, and it did.

Q And can you tell us of that specifically?

A Yes. We have two stars in our production with equal filling and equal talent, shall we say, and one by the luck of the draw, had, say, a very good dressing room and one had a lesser dressing room.

And after a period of time, it became an abrasive area and I had to get in very strongly with "to tower" as we say—the men upstairs.

And it was finally adjudicated that they both have the same size and type of dressing room.

[402] MR. LE VINE: I would like to have this marked as General Counsel's Exhibit next in order.

(The document above-referred to was marked General Counsel's Exhibit No. 6 for identification.)

Q (By Mr. LeVine) All right.

Now, Mr. Saunders, I am going to show you what has been marked as General Counsel's Exhibit No. 6.

Did you receive any communications from the Writers Guild of America on or about April 14th or 15th, 1973?

A Yes.

Q All right.

I'm going to show you General Counsel Exhibit 6, which purports to be a notice of disciplinary hearing and charges which were sent on April the 14th, 1973 and is signed by John Mendonsa, resident counsel of the Guild; I will ask you if you received a copy of this.

A Yes, I did.

MR. LE VINE: Your Honor, we offer into evidence, General Counsel's Exhibit 6, a notice of disciplinary hearing and charges that were sent to Mr. Saunders.

JUDGE: Any objections?

MR. GOLDMAN: No objections.

MR. FISHER: No objections, your Honor.

MR. KEATON: No objections, your Honor.

[403] JUDGE: General Counsel's Exhibit 6 is received.

(The document above-referred to marked General Counsel's Exhibit No. 6 for identification, was received into evidence.)

Q (By Mr. LeVine) All right.

You are a member of the Writer's Guild?

A Yes.

MR. LE VINE: That's all the questions I have of this witness, your Honor.

JUDGE: Mr. Keaton?

MR. KEATON: I would like to offer a stipulation that Mr. Saunders' case was tried by a tribunal of the Writers' Guild yesterday, May 23rd—

A I believe it was Tuesday.

MR. KEATON: May the 22nd; I stand corrected.

JUDGE: Mr. Goldman?

MR. GOLDMAN: I don't know when it was. If you tell me it was, Harry, I will stipulate.

MR. MILLER: I will represent on behalf of our firm which represented Mr. Saunders that the hearing—that his trial was held before a Guild trial committee on Tuesday, May 22nd, 1973.

JUDGE: It is my understanding that on your representation, Mr. Goldman is willing to stipulate.

Is that correct?

[404] MR. GOLDMAN: Yes.

JUDGE: Mr. Fisher, any objections?

MR. FISHER: No objections.

JUDGE: Mr. LeVine?

MR. LE VINE: No objections.

JUDGE: All right.

The stipulation is received.

MR. KEATON: I would like to have this marked as the next exhibit in order, a letter dated January 22nd, 1973, to the Writers Guild of America West from Herman S. Saunders.

And that would be Association-2, I believe.

(The document above-referred to was marked Association Exhibit No. 2 for identification.)

MR. KEATON: And I would like to have marked as Association 3, a letter dated January 30th from the

Writers Guild of America West, Inc., to Mr. Herman Saunders.

(The document above-referred to was marked Association Exhibit No. 3 for identification.)

MR. KEATON: At this point, I am just identifying the documents.

Q (By Mr. Keaton) Mr. Saunders, I show you what has been marked as Respondent's Exhibit 2—this is a Xerox copy—and is that your signature?

A Yes, it is.

[405] Q And did you send that letter to the Writers Guild at about the time that it bears?

A Yes.

Q All right.

I would like to show you next Association 3, which is a Xerox copy of the letter which you received in response?

A Yes.

MR. KEATON: I would like to now offer Association Exhibits 2 and 3 in evidence.

JUDGE: Any objections?

MR. GOLDMAN: Yes.

I don't see the relevancy.

MR. KEATON: The relevance is that these letters reflect that Mr. Saunders attempted to resign from the Writers Guild by a letter of January 22nd which was well before the strike, and got a response in which the Guild told him that he couldn't resign because they were about to go into negotiations.

And that the Board had voted his membership shall continue in the Guild for at least during the period in which the negotiations are being conducted, plus an additional six months thereafter.

And he was told that if he wanted to again tender his resignation after the completion of the negotiations, but prior to the expiration of the six-month period, he should feel [406] free to do so, and they would again consider it.

I think that is highly relevant to the issues in this case.

JUDGE: I think it is relevant, Mr. Goldman.

Any other objections?

MR. GOLDMAN: You have decided.

JUDGE: All right.

The objection is overruled and Association Exhibits 2 and 3 are received.

(The documents above-referred to marked Association Exhibits Nos. 2 and 3 for identification, were received into evidence.)

JUDGE: You gentlemen are all experienced attorneys and realize merely because I rule that a document is relevant that does not mean that I am going to find that it has a material bearing on the final decision.

Anything else?

MR. KEATON: I would like to just clarify something.

On the bottom of this document, it says, "Exhibit A," and "Exhibit B."

Please disregard that. That is not part of my offer.

JUDGE: All right.

MR. KEATON: These are copies from an affidavit.

JUDGE: All right.

MR. KEATON: I have no further questions.

[407] JUDGE: Mr. Fisher?

MR. FISHER: I have no questions.

JUDGE: Mr. Goldman?

MR. GOLDMAN: Did Mr. Saunders give an affidavit?

MR. LE VINE: Yes, he did.

I was just going to get it for you.

MR. GOLDMAN: May I have a couple of minutes?

JUDGE: That one looks like you might take two minutes.

MR. GOLDMAN: Well, it's only about a page and a half. I don't really need that long.

JUDGE: All right.

We will be in recess until 20 after, in any event. That will give you a couple of minutes.

MR. GOLDMAN: All right.

(Short recess.)

JUDGE: On the record.

Mr. Goldman, you can proceed.

CROSS-EXAMINATION

Q (By Mr. Goldman) Mr. Saunders, you are executive producer for Adam 12.

Is that correct?

A Yes.

Q Does the name Mark VII Productions or Mark VII, Ltd. have any significance to you?

A Yes, it does.

[408] Q Are you familiar with that?

A Yes.

Q All right.

Is it not true that Mark VII produces Adam 12?

A Mark VII, Ltd. is the owner of but not the actual producer in terms of production.

Q Mark VII, Ltd. is the actual owner of the Adam 12 series?

A Mark VII, Ltd. and Universal Studios; it is a co-production, as I understand.

Q All right.

And you are not fully knowledgeable of the relationship between Mark VII and Universal concerning Adam 12; are you?

A No; I have not seen the contracts.

Q Are you on the staff of Mark VII?

A I am under contract to Universal Studios.

Q To Universal Studios?

A Yes.

Q All right.

Is Mr. Jack Webb your supervisor?

A He is the owner of Mark VII, Ltd. And when there is a problem that gets to the point, I feel he should be brought in, yes.

Q Could he remove you off that show?

[409] A Yes, I think so.

Q As well as the actors, cameramen, directors, other producers?

A If he felt that someone was malfunctioning or someone was unable to do their job, he would tell me, and in all probability, something would happen.

Q All right.

And I take it you have been a member of the Writers Guild of America West for some time, have you not?

A Around four years, I would hazard a guess.

Q You have been a member of the Writers Guild for four years?

A Yes.

Q All right.

And what prompted your admission into the Writers Guild?

A I had co-written and co-created a property for Universal Studios.

Q Which property was that?

A It was a comedy—half-hour comedy by the title "Over There."

Q And on the basis of this co-writing and co-creation, you became a member of the Writers Guild?

A Some time after I did that, yes.

Q Approximately how long ago was it?

[410] A I would say—I wrote it in '67 and I joined the Guild around '69.

Q Was "Over There" ever produced?

A No. I'm really sorry.

Q Well, I don't watch television.

Since "Over There" have you done any creative writing in the television or theatrical motion picture area?

A No.

• • • •

[416] JUDGE: Mr. Le Vine, do you have another witness?

MR. LE VINE: Yes, I do, your Honor.

I will call Mr. Swerling.

Whereupon,

JO SWERLING, JR.

was called as a witness by and on behalf of the General Counsel and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

• • • •

[418] Q All right.

Could you go into some detail as to the types of duties that you perform?

A Well, chronologically the effort begins with the selection of the stories and the writers, the development —the supervision of the development of the stories until the story is satisfactory.

Once a story is approved, the supervision of the development of that story through the various drafts of teleplay—script.

Once the script is approved, the producer supervises all aspects of pre-production which includes the hiring of the director, the supervision of all of the director's activities and the preparation, which includes casting, wardrobe, selection of sets, selection of locations, special effects, make-up—if there is any special nature to the make-up, selection of music that might be needed on the set during the filming, and preparation of the budget.

And that also includes seeing to it that the script—the changes are made in the script to accommodate the budget.

And once everything has been done and you are ready to start shooting the producer has—supervises all aspects of the shooting, which includes the viewing of the dailies, which is the film shot the day before.

[419] And requesting additional shots, changes, reshooting, depending on his views of the dailies.

And resolving problems which are endless. It includes making sure that the director adheres to the schedule.

Once the show is finished shooting, we supervise very closely the editing of the picture through various evolutions.

We supervise other aspects of close production such as sound effects, underscoring, music. We select the composer and give the composer our views as to what kind of music we would like to hear.

We supervise the scoring session if time permits. And when the music is actually recorded, we supervise the

dubbing sessions—all of the music and sound effects and group dialogue, so forth and so on, incorporated into one sound track.

The last major creative evolution of the production is this.

And then when the film comes back from the lab in composite form, it is our responsibility to check it to make sure that no errors have been made in the negative cutting or that the color is right, and the print is substantially of broadcast quality.

And then it is shipped to the network, and we go on to the next one.

[420] Q All right.

Do grievances arise with respect to the production of television series films?

A Yes. Quite frequently.

Q All right.

Could you tell me the type of grievances that arise?

A The most frequent—the grievances most frequently stem from the star of a television series. I'd say that 95 percent of your grievances and 95 percent of your time resolving grievances, relate to the star.

And they get temperamental. They don't like a script, they don't like a scene, don't like the dialogue and don't like the way it is staged.

They have conflicts with the director, and they sometimes have conflicts with the cameramen. And they have conflicts with other stars—their co-stars in a series.

And they have conflicts with guest stars. And most frequently—occasionally the director will attempt to resolve these grievances.

But most frequently, he is unable to. And they come up to the producer who has to resolve the differences.

And he has to approve of the changes which he may agree with. In other words, if an actor has a grievance about a scene, it may be valid—frequently is—and then the problem comes up "how do we change it?"

[421] And it is the producer's function to consult with the actor and the director on proposed changes and to approve it.

Q All right.

Could you give us a specific example of the types of grievances that you would resolve?

A Well, along the lines I have been describing, if an actor objects to a line of dialogue, it is the understanding with every director that works with me, that no changes will be made in the dialogue without my authority.

And so, I will get a phone call and I will go down to the set and listen to the actor's complaint about the line of dialogue.

If I think he is right, I will be open to suggestions from the director or the actor, or I will have an idea myself as to how to change the line so it doesn't lose its meaning, and so that it is more comfortable for the actor to say.

Or I will have to persuade the actor that there isn't a better line than that, and he had better read it the way it is written.

Q All right.

And do grievances ever arise with respect to assignment of dressing rooms?

A Yes. That is a common grievance, particularly when there is more than one star involved; because they want equal treatment.

[422] This doesn't necessarily mean that you have to have two co-stars on a given show.

If you have a star of series, "A" and he finds out that a star of Series "B", which is also being filmed at Universal, has a more luxurious facility, he will want equal treatment.

And it is difficult to do because they have a limited amount of dressing room facilities; and they vary.

So it is a difficult logistical problem for people at the studio or directly in charge of dressing room facilities.

And the actor needs a spokesman, and that is always the producer.

He will complain to the producer, who will then attempt to put pressure on the people who have direct control of the facilities to accommodate him.

And we always try to do that because we like to have the actors happy.

Q All right.

Do any other types of grievances arise other than dressing rooms and objections to lines?

A Yes. I had a situation last season where an actor was convinced that a set had been improperly constructed in order to achieve a certain special effect that we were trying to create.

And he left the set and locked himself in his dressing [423] until we built an entire villa in effect, instead of a portion of a ceiling.

And I had to spend about an hour of my time explaining to him that there were a great many people who were qualified experts in how to achieve movie magic; and that his specific job was to act in the picture.

And if he would please have faith, that the people who are experts knew what they were doing, and if he would concentrate on learning his lines, which he wasn't accustomed to doing, prior to coming to work that we all might be better off, and we could get the job done.

And ultimately my persuasion worked. And he went back and we shot the scene and it was very effective and worked exactly as the special effects people, the director, the cameraman and myself had planned.

• • • •

[426] Q And when was the last time that you were employed as a writer in the motion picture television industry?

A Well, I would have to say that the last time that I filled out a contract for services as a writer was earlier this year; in February I would guess.

Q And when was—

A The nature of the employment was a polish on a pilot script that we were preparing for production called "Toma."

• • • •

[CROSS EXAMINATION]

[432] Q (By Mr. Goldman) Have you written any scripts or done any polishes for Toma since the inception of the strike?

A No.

• • • •

[REDIRECT EXAMINATION]

[434] Q (By Mr. Keaton) Mr. Swerling, to date, has anyone in the Management of Universal since March 5, asked you to perform any writing services?

A No, sir.

• • • •

[436] Whereupon,

STEPHEN HEILPERN

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

• • • •

[438] Q All right.

Could you describe your duties as an associate producer?

A Yes. In our particular production unit, our duties overlap; consequently, I am involved in all areas of pre-[439] production, production and post-production.

I sit in on story conferences when the story to the scripts are developed.

I help criticize the drafting of scripts as they come in. And when they finally have what is called the "shooting script," I help supervise the director.

I also help decide who the director is going to be. My advice is very often taken.

And with the director, we help look for sets, pick locations, pick wardrobes, different make-up problems, and we are very much—I very much am involved in casting—all phases of pre-production.

And once the show goes into production, I try to be on the set as often as possible to supervise anything that may happen there.

Very often there are disputes. And if I happen to be on the set, I will attempt to settle or arbitrate the dispute.

As an example, one of the lawyer segments of "The Bold Ones," one of the actors asked that a prop not written in the script be included.

It happened to be a dress that the actor's wife had bought.

And being very familiar with the script, I thought that it was wrong for her character and his character.

[440] So I—the director could not win the argument. I had to.

I might add, you know, that a director is usually higher on a free-lance basis, whereas the producer and the associate producer, we are responsible for the entire creative content of the series.

So very often a director asks us to mediate or make a decision.

Another good example might be that actors very often will come to a set—let's say they are supposed to be a L.A. policeman; and an actor reports to the set with hair longer than mine.

We try to be factual. L.A. policemen do not have hair as long as mine.

And the actor is asked to submit to a haircut.

And if he doesn't, of course, we have to replace him. And a director is very often too busy involved in getting the show out on schedule that sometimes he will miss things like that.

And that is why one of us tries to be on the set.

These things come up all the time. I won't bother to corroborate what Mr. Swerling state previously, but there are many problems with especially the star of the series.

Now, getting on to post-production. I am involved in post-production in cutting and dubbing and looping of the [441] actors.

That is primarily my responsibility.

Looping is re-recording their voices.

Very often the lead in a series will object when I ask him to read a line differently in looping.

I have to hopefully win the argument.

• • • •

[442] Q All right.

And how long have you been a member?

A Almost two years.

Q Did you receive the strike rules?

A Yes, I did.

Q All right.

MR. LE VINE: I have no further questions of this witness, your Honor.

• • • •

[446] THE WITNESS: Another statement made I believe, by Mr. Frankline, was that if a producer or an associate producer or an executive producer only had to dub a show to finish completion of his services on the show, he could not cross the picket line to do that once the strike started.

Q (By Mr. Keaton) Even though he would be doing no writing whatever?

A Yes, because that question was asked—one producer [447] would ask about editing and another producer would ask about another phase of production, having nothing to do with writing.

And the answer was always very simple: "If you are a member of the Writers Guild, you cannot cross the picket line."

Q Including that symbolic picket line?

A Including the symbolic picket line.

MR. KEATON: That's all I have.

JUDGE: Mr. Fisher?

MR. FISHER: No questions.

JUDGE: Mr. Goldman?

MR. GOLDMAN: Yes, sir.

CROSS-EXAMINATION

Q (By Mr. Goldman) You say you became a member of the Writers Guild two years ago?

A Yes.

Q What prompted you to become a member of the Writers Guild?

A I performed rewrite services on an episode of "The Bold Ones," and for which a single picture contract was executed by me.

And even though I didn't have to join at the time because of the Taft-Hartley Act, I felt I would be doing more rewriting services, so I did join at the time.

Q All right.

[448] And did you do more rewriting services?

A Yes. Subsequently I have done two more rewrites and a polish.

MR. GOLDMAN: May I have Mr. Heilpern's affidavit?

MR. LE VINE: Yes.

MR. GOLDMAN: Let the record show I am handing the affidavit back to General Counsel.

• • • •

[455] Mr. LeVine, are you ready to proceed?

MR. LE VINE: Yes.

We will call Mr. Dave Freedman.

Whereupon,

DAVID FREEDMAN

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

• • • •

[461] Q (By Mr. LeVine) All right.

Could you tell me what authority, if any, does the executive producer have with respect to hiring of employees?

[462] A He has a great deal of authority. It is his shared but almost unchallenged authority to do the hiring and firing of the above-the-line people.

Q Who would he hire?

A Writers, actors, directors, in many instances the producer, story editor.

Q All right.

What authority, if any, does the producer have with respect to the hiring of employees?

A He shares that authority except in the most important areas.

He could hire or fire without the approval of the executive producer being specifically sought.

• • • •

[467] Q (By Mr. LeVine) What authority, if any,

does the director have with respect to the adjustment of grievances?

A He has a great deal of authority in that instance, because these—there are all types of grievances; they come up on the spur of the moment, they sometimes are meaningful and they are sometimes minor.

He has a rigid schedule to follow or else it will involve the expenditure of a great deal more money due to the delay.

He will make on the spot solutions.

• • • •

[469] Q (By Mr. LeVine) What is the name of the function at Paramount?

A There are several names to the function, each having slightly different interpretations of duties.

We hire executive script consultants; we hire story editors; we hire executive story editors.

Do you want me to describe the functions in the different titles?

Q Yes, please do.

A Executive story consultants sometimes do the same thing as a story editor, depending upon the deal that is negotiated with them up front.

If they are exclusive to the television series, they will do the functions that a story editor normally does; which I will describe in a moment.

If they are executive story consultants on a non-exclusive basis—that is, they may be working on another series in another studio elsewhere, or developing a script elsewhere, where the services are not exclusive to that series, they are in a more pure consultant capacity.

Now, the consultant will read first drafts and completed [470] scripts.

They will see the rushes of the individual episodes. They will attend screening for network executives. They will attend rough cut screenings.

They will be used almost in a story executive producer basis as a—as would a non-exclusive consultant in other industries.

A story editor and/or executive story editor on an exclusive basis, will devote full time to his duties in connection with that particular series.

And his function would be to secure writers, listen to writers read story lines, suggest to writers who are employed the direction to take in this particular script, or because of this particular series has this particular long-range objective, and he maintains the integrity of the continuing character he works with writers from the beginning stage to the final stage when the script is ready for production.

And he does some rewriting—polishing—of his own.

Q All right.

What authority, if any, does the story editor, executive story editor, function have with respect to the hiring of employees?

A He is able to hire writers, assign projects on his own, and he usually confers with the producer and/or the [471] executive producer, recommending that it be hired.

But he can commit.

Q What authority, if any, does the story editor or the executive story editor have with respect to the adjustment of grievances?

A That woud be only that I can think of in terms of writing credit, ameliorating writers' feelings when things have to be rewritten, and the writer cannot grasp the reason for rewriting it.

He can exert influence in the settling of those grievances.

Q All right.

What authority, if any, does the executive story consultant have with respect to the hiring of the writers or the hiring of any employees?

A If the executive story consultant were on an exclusive basis to the studio, in devoting his full time to the series he would have greater authority in that area.

He also has the authority even though not on an exclusive basis, for bringing writers to the series, hiring them to do the series, and working under the working story editor if there isn't a working story editor per se under the producer.

He would use great influence in securing the best writers particularly suited to this particular kind of a series—the one he is working on.

• • • •

[484] Q What company did he have? Do you know the the name of his company?

A I don't remember the name of his company.

Q All right.

Now, this was a company that Paramount Television had an agreement with, and his company or that company —loaned out the services of Mr. Levy to Paramount Television?

A Yes.

Q Is that what you are referring to as the typical loan-out agreement?

A Yes. Where the services of the individual—

Q The services of the individual?

A —are of the essence to the agreement.

Q With respect to Mr. Levy's—your company's arrangement with Mr. Levy's company, was there an arrangement which included [485] the function of writing?

A Yes.

Q All right.

Let's go to Ivan Goff.

Is Mr. Goff—does he have a direct contract of employment with Paramount Television, or does he—is he employed by a company which is lent to you?

A I don't know that offhand.

Q Ben Roberts?

A I don't know that either.

Q Paul Playdon?

A His agreement with us, I believe—I'm not sure--is direct services.

Q Direct service contract?

A I beleive so. I'm not absolutely sure.

Q Is part of that contract that he has with you—does it cover writing services and functions?

A Yes.

Q All right.

How about Jerry Ranow? Is that a direct contract with you, or a loan-out arrangement?

A Again, I believe that is a direct services agreement.

Q And in this direct services agreement, was there some writing function included in that?

A Yes, there is.

[486] Q How about Craig Srangis?

A Yes.

Q Direct services contract?

A I believe so, yes.

Q And part of that direct service contract would have included in it, writing functions?

A Yes.

Q How about Ed Scharlach? Is that a direct services contract?

A I don't know.

Q It would be either a direct service contract or one of those loan-out contracts?

A I don't know which one it is.

Q All right.

Would you know whatever it was, that it required him to perform some writing functions?

A Yes, that I know.

Q And when we are talking about writing functions, we are talking about polishes, touch-ups and those functions other than the A through H function.

Do you understand that, sir?

A Yes.

Q And your answer is "yes," that is what we are talking about when we are talking about writing functions?

A Yes.

[487] Q How about Bernie Orenstein? Is that a direct service contract or a loan-out?

A I believe that is a loan-out—well, let me amend that.

One of those two, either Turtletaub or Orenstein, is a direct services.

The other one—and I don't know which the other one is—I believe the company is supplying the services.

Q All right.

Now, you said that you are considering them to be employed by Paramount Television.

Is that correct?

A Yes.

Q But their services are to be performed in the future?

A Yes.

Q All right.

And when you say their services are to be performed in the future, is it the fact that they do not want to cross the picket line the reason why their services are not being performed—

MR. LE VINE: Objection, your Honor.

That is completely speculative.

MR. GOLDMAN: Well, unless he knows—

MR. KEATON: It is irrelevant and immaterial. And furthermore, it is designed simply for the Guild to discover who is working in order to be able to sanction a few—

[488] MR. GOLDMAN: Well, we don't have to discover who is working.

Mr. Orenstein is an ardent supporter of the strike.

I think I am entitled to know from this gentleman. And it goes to our very issue in the Ninth Circuit case, that in the course of a strike, can a union threaten discipline of its supervisors crossing the picket line?

And the question is whether or not these people are doing it on their own, or they are threatened.

We want testimony of a number of these people that they are on their own not wanting to cross the picket line.

MR. KEATON: Your Honor, we haven't seen the Ninth Circuit case yet, but the description that I have of the case—I don't think Mr. Goldman has seen it either—but the description I got in this office based upon a phone call was that the case simpy holds that a supervisor who voluntarily belongs in a labor organization, can be disciplined under the circumstances of that particular case.

Now, none of us have looked at the board decision. It is at ITU case.

And the evidence shows already that the people who belong to the Guild do not belong voluntarily.

A man that tried to withdraw was not allowed to.

And I don't think we should be permitting the Respondent here to engage in a fishing expedition as to who is working[489] and as to who isn't working.

If Mr. Orenstein is in support of the strike. I suppose counsel for the Guild can put him on the stand and have him so testify, and we duly object.

JUDGE: Mr. Keaton

MR. GOLDMAN: Your Honor—

JUDGE: Just a moment, please.

I am not going to rule in respect to any other person or any other situation.

But in this particular situation, the witness has already testified on direct with respect to the employment status of these two gentlemen.

I put it that generally.

He stated what the conditions of their employment were, and when they were likely to start work and the reasons they were likely to start work.

Now I have to permit Respondent's counsel to test that testimony.

And that apparently is what he is doing.

Mr. Goldman, I would appreciate it if you would repeat your question.

MR. GOLDMAN: Yes. sir.

Q (by Mr. Goldman) Mr. Freedman, you stated that as to Mr. Orenstein, and Mr. Turtletaub, you considered them to be employed by Paramount Television; however, their employment—

[490] strike "employment"—however, they were not actually doing anything because the project they were employed for has not commenced.

It is to commence some time in the future; is that correct?

A That is correct.

Q All right.

Now, is one of the reasons for the projects not starting at this point in time because Mr. Orenstein and Mr. Turtletaub are honoring the picket line?

MR. KEATON: I renew my objection.

JUDGE: Mr. Freedman, would you go out that door, there where you can't hear what I am getting ready to say, and we will call you in certainly not more than two or three minutes.

(Witness excused.)

JUDGE: All right.

Now, Mr. Goldman, my problem runs as follows: it may well be that this company is delaying the start of many projects, including this one, because of the strike.

And I would be inclined to think that that might be a legitimate question.

The problem I have is that you are putting it in terms of these two particular people; and I consider that those two situations are entirely different.

[491] And I am going to sustain the objection of General Counsel and the Charging Party to your question.

But I want it to be done in terms so you understand. why. And I didn't want it so the witness could hear.

I am not precluding you from going into the reasons why—if it is a fact, and I don't know it is a fact yet—that Paramount may be delaying the project.

But I can't see any reason for permitting you to ask whether it is because these two people may be on strike.

MR. GOLDMAN: Fine, your Honor.

I will accept that.

JUDGE: I would say two other things: you see, these two men so far as I know, as of the time of the strike, started were not performing services for this company.

So, as to this company, there is substantial issue as to whether these two men are on strike against this company.

And the company may be delaying putting that problem to the test by not asking them. But that is different.

That in my mind, indicates that the company was just not going ahead because the strike was in existence.

MR. KEATON: Your Honor, may I ask one question?

I, of course, will have to accept your ruling, but in what way is it possibly relevant to this proceeding whether Paramount or any other studio is delaying a project by virtue of the strike?

[492] JUDGE: Mr. Keaton, I have already told you that as a general rule, I might agree with you.

The problem is that the witness on direct examination, said these two men are under contract, and the reason they haven't done any work for Paramount is that the project for which they have been contracted, has not started.

Now, once he said that, Respondent may within certain limits ask, "Why hasn't the project started?"

MR. KEATON: Your Honor, I think there is a misapprehension.

There are many projects in the motion picture industry that would not have started on February 1, which has absolutely nothing to do with this strike.

And the mere fact that he said he hasn't started on February 1, does not show that General Counsel opened up the question whether the strike delayed it.

The fact of the matter is until the networks select product, there are quite a few things that don't get started in this business.

JUDGE: Mr. Keaton, I think this argument is not getting us very far.

The chances are fairly good that when the witness was asked, he will say—he might very well say, "The project hasn't started because we are not ready."

I don't know what he is going to say.

[493] Will someone call the witness back?

MR. KEATON: The question asked was whether it was started because of the strike—

MR. GOLDMAN: Excuse me.

The witness is here. I don't think this commentary should be taken—

JUDGE: All right.

I will meet objections as we get to them. Mr. Freedman, I have ruled that you don't have to answer the last question.

Go ahead, Mr. Goldman.

MR. GOLDMAN: All right.

Q (By Mr. Goldman) With respect to Mr. Orenstein and Mr. Turtletaub, Mr. Freedman, when were their services to commence?

A Approximately four weeks prior to commencing of the principle photograph.

Q All right.

When was principle photography to commence?

A We have not set a date.

Q And why is Paramount delaying the project and why have they not set that date?

A I did not say we were delaying the project.

Q Why has Paramount not set the date for principle photography?

A It hasn't—we have not established our production [494] schedule yet for all series.

Q For all series?

A Yes.

Q All right.

Now, why haven't you established your production schedule?

MR. KEATON: Objection.

It is irrelevant and immaterial and going beyond the scope of direct and not within the framework of the pleadings.

And is designed and calculated to provide the union with information about the employer's plans in the strike.

JUDGE: All right.

I will sustain that. Do you want to make an offer of proof?

MR. GOLDMAN: No. That is all right.

I will go on to others.

Q (By Mr. Goldman) Is Ivan Goff currently employed?

A He is under contract to us, yes.

Q Well, Mr. Orenstein and Mr. Turtletaub, are they under contract to you?

A Yes.

Q And does the same situation hold true with Mr. Goff as it does with Mr. Orenstein and Mr. Turtletaub?

A What is the same situation?

Q That you just described?

[495] JUDGE: Are you asking that they have not started work because a schedule has not been established?

MR. GOLDMAN: Yes.

THE WITNESS: Schedule has bee established for the series that they are to render their services on.

Q (By Mr. Goldman) Has Mr. Goff started work?

A No.

Q All right.

Let's go to Mr. Roberts—

MR. KEATON: I will object to that, your Honor.

W are now doing piecemeal what you ruled earlier we were not going to do.

He—

MR. GOLDMAN: Your Honor—

MR. KEATON: —is arguing as to each witness, whether he is working, and I think it is outrageous for him to try and find out who is crossing that line.

MR. GOLDMAN: Your Honor, General Counsel and Mr. Keaton on direct, brought out the fact that these people were employed as of February 1st—

JUDGE: Gentlemen, I don't want to get in too much argument about it.

It is a legitimate inquiry as far as I know during the course of a strike, to determine who is working and who isn't [496] working, as long as that is relevant to the issues.

Mr. Goldman, will you give me a little help as to the relevancy of this point?

MR. GOLDMAN: Yes, your Honor.

It is very simple. If Mr. Orenstein and Mr. Turtletaub were eliminated from the list as not being employed and if Mr. Goff falls in the same category as Mr. Orenstein and Mr. Turtletaub in that he is not working, how have we, as a union, committed 8(b) (1) (b) conduct towards those people that are not employed by the company?

Or are they just sitting out there in some nebuluous term of "never, never land," or do they have to actually employed by the company, working?

Mr. Orenstein and Mr. Turtletaub are not, and it turns out that Mr. Goff isn't.

JUDGE: Well you haven't estabished that Mr. Goff is in exactly the same position as the other two.

MR. GOLDMAN: Well—

MR. KEATON: May I be heard for just one moment?

We have established at this point, that Mr. Goff and all the people on this list other than Mr. Orenstein, and Mr. Turtletaub, were working as of February 1, 1973 and thereafter.

I submit it is not within the pleadings of this case to establish by anyone whether the strike rules of the

Guild have been effective or ineffective; that is not an issue before [497] the Board.

And if these people were in fact working, it doesn't make a dilly dee of a difference whether they are working today.

And that is what counsel is asking for.

JUDGE: Gentlemen. Mr. Goldman, that was my point. You haven't established that anyone but Orenstein and Turtletaub were in a special position.

The others will testify—were identified as having been employed on February 1 and continuously thereafter with the exception, I think, of Mr. Levy whose terms of contract expired.

MR. GOLDMAN: All right.

JUDGE: So let's go on, please.

MR. GOLDMAN: Well, let me—I would like to finish—getting back to—all right.

Q (By Mr. Goldman) Let's get back to Lawrence Heath.

Is Mr. Heath under a direct service contract, or loan-out agreement?

A I am not sure.

Q Whether it is a loan-out agreement or a direct service contract, Mr. Freedman, are you familiar with or have any knowledge of, what is encompassed in either of the agreements?

A In Mr. Heath's agreement, yes.

Q All right.

[498] Does part of the agreement cover the writing functions?

A Yes.

Q Howard Leeds; is he on a loan-out or direct service contract?

A I cannot remember.

Q All right.

Now, with respect to Mr. Keeds, do you have any knowledge concerning his contractual status, in that it covers writing functions?

A yes.

Q It does cover writing functions?

A yes.

Q Skip Webster; loan-out or direct service contract?

A I believe Skip Webster is direct services.

Q And does his contract provide for the writing functions?

A Yes.

Q Sherwood Schwartz; direct service contract or loan-out?

A That is a loan-out.

Q And do you know who it is a direct loan-out with?

A Redwood Productions.

Q What is the name of that?

A Redwood Productions.

Q All right.

And do you know if Redwood Productions has any other employees?

[499] A I don't know.

Q Part of that arrangement between Paramount Television and Redwood Productions calls for the use of Sherwood Schwartz writing functions?

A Yes.

Q Gary Marshall, direct service contract or loan-out?

A I am reasonably certain it is a loan-out.

Q Do you know the name of the company?

A No.

Q All right.

Would that agreement have a provision in it for writing functions?

A Yes.

Q Jerry Belson; direct service contract or a loan-out?

A I don't know.

Q Would you be familiar with—you have knowledge of the fact that whatever contract it is, there is a provision for his writing function?

A Yes.

• • • •

[518] So now included in the script consultant's functions are the duties to rewrite and polish and the writing functions that we have described before?

Is that correct?

[519] A Not always, but I think in this list the people that are designated as script consultants do have that function.

• • • •

[533] I will call Frank Paris.

Whereupon,

FRANK PARIS

was called as a witness by and on behaf of the General Counel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. LeVine) Would you please state your name?

A Frank Paris.

Q What is your address?

A 14220 Terrabella in Arlita.

Q California?

A Yes.

Q Where are you employed?

A Walt Disney Productions.

Q What capacity are you employed in?

A Executive story editor.

Q All right.

And how long have you held this position?

[534] A Six months; and three and a half years prior to that I was the associate story editor in the same department.

Q Do you have a personal services contract?

A No.

Q How are you employed?

A How was I employed?

Q How are you employed?

A On a week-to-week basis.

Q All right.

And what are you duties?

A Well, as the head of the Story Department, I am in charge of finding literary material to be produced as motion picture or television for our television series. I am also in charge of recommending writers to producers for any open writing assignments.

I am responsibe for negotiating the purchase of literary property and am responsible for negotiating the salaries of writers that we hire.

I am the title registrar for the company; and as the head of the Story Department, I am responsible for all operations in the Story Department in Burbank, New York and London.

Q All right.

What authority, if any, do you have with respect to hiring writers?

[535] A No authority to actually hire a writer. I recommend writers to producers on open assignments.

And they make the decision whether or not they will hire a particular writer.

Q Based on your recommendation?

A Yes. Because unless a writer comes to them from the outside or someone that they know personally, they look to me to recommend a writer for an open assignment.

And I usually recommend two or three.

And I sit in with the interviews with the producer and writer. And after that interview is over, we compare notes and thoughts, and the producer makes his decision.

Q Does he take your recommendations?

A Many times, yes.

Q All right.

What authority, if any, do you have with respect to adjusting grievances?

A Only as a mediator. If a writer has a problem more likely than not, he will come to me because I am the first person he meets in the studio.

And I am the person who keeps tab of what he is actually doing because my department is also responsible for reporting his employment to the Personnel Department, to the Payroll Department, we handle all the contracts; we file all the contracts, we keep all the employment papers for writers in [536] my office.

And so, I have a very close association with writers. And if he has a problem, more likely than not, he will come to me because it is usually a problem with a producer, or things aren't working out.

If the producer decides that the writer is not working out, he will ask me to tell him and it will be up to me to let the writer go.

• • • •

[537] The motion to strike is denied.

Q (By Mr. LeVine) All right.

When did you became an associate member?

A I forget the exact date. I haven't written for four years, and it was either a year and half or two years after my last assignment that they notified me that I had been reclassified from current status member to associate member.

• • • •

[538] MR. LE VINE: Yes.

Your Honor, we will offer to stipulate—General Counsel would offer the stipulation that Frank Paris, executive story editor, at Walt Disney, is told by Carey Wilbur, an agent of the Guild, that if he crossed the picket line, he would be subject to penalties by the Guild and he could be penalized to such an extent that no writers would work for him.

And this was in a telephone conversation.

We would further offer the stipulation that on April the 9th, a notice of disciplinary hearing in charges charging Mr. Paris with crossing a Guild picket line at Walt Disney Productions on or about March 6th for the purposes for rendering services for Walt Disney Productions, which company was [539] at the present time, on the Guild strike list, was filed by the Guild and sent to Mr. Paris.

And that a hearing—has taken place—a hearing took place on the charges on—what date—on May 24th, 1973.

JUDGE Do you agree with that stipulation?

MR. GOLDMAN: Yes, except for one thing.

I would like to have the date when the alleged telephone calls was made to Mr. Paris.

MR. LE VINE: All right.

It was February the 22nd.

JUDGE Is that your stipulation?

MR. LE VINE: Yes, it is, your Honor.

JUDGE: Mr. Goldman?

MR. GOLDMAN: Yes, I will so stipulate, except to the facts that the trial has been adjourned to a date uncertain in the future on disciplinary matters.

JUDGE: You were saying that with respect to Mr. LeVine's statement, as to the trial, that the trial has not taken place?

MR. GOLDMAN: It is scheduled and it was adjourned to a date uncertain in the future at this point. And that took place yesterday—that adjournment.

JUDGE: Do you accept that, Mr. LeVine?

MR. LE VINE: Yes, I would, your Honor.

[540] JUDGE Do the rest of you gentlemen agree?

MR. KEATON: I am unclear what he means by "adjourn." Did it commence yesterday?

MR. GOLDMAN: Yes. It commenced and was recessed to the date—

JUDGE: Do you gentlemen join in the stipulation?

Mr. Keaton?

MR. KEATON: Yes.

JUDGE: Mr. Fisher?

MR. FISHER: Yes.

MR. MILLER: Yes.

JUDGE: All right.

The stipulation is received.

• • • •

[546] MR. LE VINE: I will call Mr. John Mantley.

Whereupon,

JOHN MANTLEY

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

[547] DIRECT EXAMINATION

• • • •

[548] Once those scripts are assembled, I hire directors to make those scripts.

I also decide with the help of my producer, where and when these episodes should be shot, which directors should shoot which episodes, and in consultation with the director and the rest of my—and my producer, I decide what actors shall appear in what roles in those episodes.

Finally, I supervise the direction—that is, I view the dailies each day and discuss with the director, the direction in which the work is proceeding, whether we agree it is in the right direction or not.

Finally, I view rough cuts and consult with the editors about what changes should be made.

I hire the musicians who will score these episodes. I supervise the dubbing of these episodes.

And I finally have the final say on what the answer print will be; which means the final version of the show which is presented to CBS to be put on the air.

I am also instrumental in consultation with CBS in deciding which episodes shall play first, and what order they shall play during the season.

Q All right.

Now, what authority, if any, do you have with respect [549] to the adjustment of grievances?

A Well, I would say almost total authority. Do you want examples of that?

Q Yes, please.

A Well, there are many.

I suppose there is one, for example, at the moment that is a bit complicated, but I will make it as brief as possible.

CBS Cinema Center Films made a very excellent film called "Little Big Man," and they shot a substantial amount of footage on a magnificent sequence which was the massacre of Indians in an encampment with many calvary men and so forth.

There was a great deal of footage which was not used in that film and which CBS Cinema Center Films had.

And it occurred to me that it would make a very interesting Gunsmoke episode if we did the story of the man who led that raid; and as the man who dropped the bomb on Hiroshima, he was in atterrible emotional state for many years—or one of the men was.

So we developed that story after CBS Cinema Center Films had agreed that we could buy some of that stock footage to use, so that in moment of aberration, he would remember, and we would use subliminal cuts of that massacre.

And after the film had been cut, Program Practices came [550] into it and desired that we remove several cuts because to their eye, they appeared too violent.

The film was then aired. And I received from the Stuntmens Union a demand for $25,000 in residuals—payments for the so-called stunts which appeared in that episode.

Since the cuts were almost subliminal and it was necessary even for the stunt men to stopframe on a movieola to discover what the stunts were and who was doing them, I refused to pay that.

And I demanded that this particular controversy go to arbitration.

It has not yet been settled.

Is that what you mean by "grievances?"

Q That is one type of grievance.

Do other grievances arise?

A Yes. Well, for example, if a director comes up to my office—which has happened several times—and says, "I simply cannot work with this cameraman," I must then go down to the set and try to resolve that grievance; otherwise the film stops.

And in one particular instance where this happened, I went down and the cameraman said "The director screwed up the dailies and he is just copping out; it is not my fault. The director said he couldn't get the proper shots."

So I said to the cameraman, "I suggest that when you are [551] asked to set up a shot, when you have it set up, you ask the director to look through the camera, and then ask him if he is satisfied with what you are getting."

So the dispute was thus resolved.

Another example of a grievance was when we were on the Rogue River last summer and we did a two-part episode, a stunt man had agreed to a certain sum of money—I have forgotten precisely how much it was—to do quite a dangerous leap from the top of the gorge into the river.

And we had underestimated by about 30 or 40 feet the heighth of that leap.

And the stunt man requested more money. He said, "It is more dangerous than you told me." And of course, I gave it to him. I thought he was entitled to that.

Is that enough—

Q I would say so.

From your—based on your own experience with other executive producers, employed by CBS, do they have the same responsibilities that you would have?

A I would think so.

• • • •

[556] Q All right.

And when did you receive your last writing credit?

A I would guess about nine years—eight or nine years ago.

I was the story editor on Gunsmoke at that time, and I rewrote John Meston's work and Kathline Hite's.

And both of them objected to being rewritten.

And the credit was given to me.

[557] I did not really write those scripts in their entirety. I rewrote them substantially and Mr. Meston objected.

Q That's all right.

You have had no writing credits since that time?

A None whatsoever.

Q All right.

And why are you a Writers Guild member?

A Because I am obliged to be.

Q Would you explain that answer?

A Well, when I became an executive producer, and was not taking any credit whatsoever for any writing that I was doing, and there was a minimal amount of it, I called The Writers Guild and said, "Why must I continue to pay dues since I am not getting any credit or any residuals and I am doing very little writing?"

And the person that I talked to at The Guild said, "You do do some writing."

And I said, "Yes, I do."

And she said, "In that case, you must be a member of The Writers Guild by the Writers Guild By-Laws."

And I said, "What happens if I decide that I don't care about that, and I don't remain a member?"

And she said, "In that case, no writers will be permitted to work with you."

• • • •

[558] Mr. Katzman, who is the producer on Gunsmoke, is also responsible for budgets.

• • • •

[559] Q All right.

Do these—making arrangements for labor on locations, does that involve negotiating contracts at all?

A Oh, of course it does.

Q And who would Mr. Katzman be negotiating with?

A Mr. Katzman would make the decision as to who he wanted, how many people he wanted in each case, and then would probably in most instances, then tell the production manager who is also on location, to make the deal.

He would be the one who decided.

Q Are these deals with individuals or with labor organizations, or what?

A Both. They would be labor organizations in the case of carpenters, and drivers for The Teamsters, but in the case of bit part players, or people who do small parts in the show—and I would presume with extras—they would be individual contracts.

• • • •

[560] Q All right.

And what authority does Mr. Katzman have, if any, to resolve or settle grievances or problems which may arise in the course of the production?

[561] A Well, substantial. I think any good producer tries to relieve his executive producer of as many responsibilities in the area of grievances as he possibly can.

Q Any particular examples come to mind?

A Well, there are many, you know. Occasionally, as we have heard here before, and I have heard, there is a problem with an actor on a set who is resisting direction.

And there is a conflict between him and the director,

and the production is being held up, he will go down to the set and resolve that difference.

At least on occasion he discharged the actor in question.

And rightly so, I think.

• • • •

[562] On my show, as on many shows, but not all, an associate producer, Mr. Honthaner, is in total charge of the post-production area of the show.

That means that he is responsible for seeing that the dailies arrive on time; that they are properly printed.

Sometimes we get bad print jobs, too light or too dark, and so forth, and he is in charge of going to the lab to correct those deficiencies when they occur, and try to find out why the occur.

Once the dailies are put together, and I have approved a rough cut, Mr. Honthaner then takes the finished print and gives that print to the sound cutters and the effect cutters, and to the looping editor.

"Looping", if you don't happen to know that term, means that if you are on location and you have got an airplane flying overhead during dialogue, that's fine in a modern show, but in a western, you obviously can't use that.

So that dialogue has to be lip synced in the studio so that we eliminate that noise.

Sound effects have to be cut.

And Mr. Honthaner, once I have decided who the composer will be, shall attend the sessions wherein the places where the music will be placed, are decided upon; it is called [563] "spotting."

He is responsible in that area.

• • • •

[565] Q What responsibility, if any, does the Associate Producer have for resolving grievances or problems which arise in the post-production process?

A He has the same responsibility as have other people in my employ who I have put in charge of departments.

Mr. Honthaner—I don't believe he would ever fire anyone without my permission, although I think he believes he would have that right.

He does come to me and he has said on occasion—I have told you about instances before the fact—before the season began, but if it is of interest to you, I can give you a specific example that occurred during the season.

There is an unfortunate tendency in this industry to regard television as sort of the stepchild of the industry.

And pay scales are far lower in television than they are in the motion picture area.

And Studio Center—Cinema Center Films at one time operated out of Studio Center, which is where we produce Gunsmoke, and there was a time when their people had very little to do—

Q "Their peope," referring to the film entity?

A Yes. And I—

Q Motion picture film entity?

A That is right, yes.

[566] And I needed people—additional sound cutters and effects cutters on Gunsmoke because I had done an elaborate location show which required a lot of that.

And the studio wished because these people were on salary—the people that is, from the motion picture end of it—wanted them employed.

So we put them to work in our cutting rooms.

When this happened, there was a great deal of controversy because the people from the film industry who were the assistants to my cutters, were making almost twice as much money as my people.

And my people complained that they didn't do half the work.

Mr.—I would not be aware of this unless Mr. Honthaner came to me and said, "Look, we have an ugly situation on our hands. Our people are very dedicated and care quite a lot and they are upset because, first, the people who were working under them, are making a lot more money than they are, but they are particularly upset because these men take no pride in what they do.

"This is not their show and they don't care about it as we care about it.

"And I think these people ought to be replaced."

So I went to Bob Norvet, who is vice-president in

charge of Studio Center here, and to Edward Dennault, who is [567] his assistant, and I said, "I'm sorry, gentlemen, I know what your problem is, but I want these people out."

And they were indeed replaced and the problem was resolved.

Q All right.

Now, would you describe for us, if you would, the duties of the executive story consultant on your program?

A Yes.

Q What is his name, first of all?

A Jack Miller.

Q Mr. Miller is in charge of the entire department—

A Which department?

Of Story.

Perhaps it is easiest to say that at the beginning of the year Jack and I and generally Mr. Katzman, if he has time, get together and decide what kind of stories we are going to reach for.

And we usually decide to try to attempt to find new writers for Gunsmoke, because I have a limited number.

I believe they are the best in the industry, but I keep losing them because they keep going to features, and I have to keep trying to replace them.

Mr. Miller makes recommendations to me about writers that he thinks might work with Gunsmoke, because for a great portion of the time in addition to his other duties, I require [568] him to read material from other writers.

That is part of his functions.

So that he then says, "I would suggest Joe Smith and Jim Brown," and so forth.

And I say, "Fine, ask them to come in and see if they have got anything that would interest us."

Q "Jim Smith" and "Joe Brown" are people that he has selected out of a greater number of applicants?

A That is right. Out of the writers that are within his knowledge that he knows—work he has seen because we don't bring anyone into the show unless we have read several of their scripts.

So we have some concept of what kind of ability they have.

So he then makes appointments with these men and they come in and they tell him stories.

And supposing, for example, that a dozen writers came in—I think there were 15 or 18 this year—out of that 15 or 18 writers, he came to me with three or four stories of which I believe I approved three.

I think he came to me with four and I approved three of the stories.

He then went back and put those three writers on assignment; the assignment being to the extent of an outline.

Q And did he make a deal with them at that point?

[569] A Yes.

He makes out the forms and sends an official notification to Ann Nelson, who is in charge of that area of Business Affairs for CBS at TV City.

He sends them over under his signature an announcement that "Jim Brown" has been set to do an outline for Gunsmoke.

In addition to those duties, I have from CBS—and to the best of my knowledge, I am the only television show in all of Hollywood which has this right—the right to read unsolicited material.

It is normally returned unopened because of the danger of lawsuits.

Ever since I began with CBS, one of my stipulations for working has been that I be permitted to read this material because I find fresh material comes from this area, and many fine writers have come out of that area.

So he reads all of that material; and there is a lot of it.

And if there is in that map of material that comes unsolicited to the network, material which he believes is viable material for Gunsmoke, he brings it to me—first to Mr. Katzman, and then to me.

And if we approve it, we then proceed with those writers.

He is also responsible for seeing that every piece of unsolicited material—before it is read—that there is [570] disclaimer form which must be signed.

So nothing is read until the disclaimer form is sent in.

He also—when the outline comes in, it is submitted to me or to Mr. Katzman—and of course, Jack Miller has one himself—and we make our individual notes.

We then get together—the three of us—and decide what changes, if any, should be made in the material.

Occasionally—and those are lovely moments—an outline will come in when we all agree on it, and there is nothing to be done—just let him go and write it.

That is beautiful. But that is very rare.

And then he then takes our suggestion, including his own, and goes back to the writer and discusses with the writer, what changes ought to be made.

Rarely but occasionally a writer will make a series of objections to some changes that we want made.

In that case, Mr. Miller comes to me and says, "Look, I have got a problem. The writer won't do this."

And I say, "Okay, bring him in and we will talk to him."

JUDGE: Mr. Fisher, the question has been answered.

Q (By Mr. Fisher) All right.

Let me try to focus—I think what you are getting at—I gather what you are getting at—well, what authority [571] does the executive story consultant have with respect to—if any—with respect to resolving problems or grievances which arise from writers working under his direction?

A He has a lot of authority in that respect, but in the past few years, there have been very few—serious—in fact, I can't think of a single serious disagreement between the writer and the members of our production staff.

But certainly if those things arise, it is within his province to resolve them.

Q All right.

What authority, if any, does he have with respect to the termination of services of writers?

A Oh, a great deal. Again, as with Mr. Honthaner, or Mr. Katzman, he wouldn't be in that position if I didn't respect his judgment.

But if he comes to me and says, "I think we are beating a dead horse with this writer. I don't think he

is ever going to get it," I will simply say to him, "Discharge the man," or "Let's not use him anymore."

I recall one particular instance before Jack Miller became writer on this show when Cal Clements was the story editor.

He had twice rejected the story of Jack's; he didn't think it would work.

And he finally brought it to me because Jack insisted [572] "I like it," and Jack wrote it and it was one of our most successful shows of that year.

So that was one of our rare instances in which I have overruled the story consultant.

Q Have your executive story consultants ever discharged writers, then?

A Oh, yes, except you don't—

Q Wait a minute.

You said they discuss it with you first. Who talks to the writer after it has been discussed?

A The story consultant. But the word "discharge" is perhaps not a correct word in this case.

It isn't as if someone were permanently employed; they are not.

They are employed on a free-lance episode-to-episode basis.

If a writer doesn't work and he can't fix the outline, he may be discharged on that assignment—"cut off" as we say in the business.

That rarely happens but it does. And he would do that; Mr. Miller would do that.

• • • •

[589] And do you know if your contract between CBS and Mantley Productions, Inc. includes services of a writing capacity?

A Mr. King tells me it does.

• • • •

[596] Are we ready to go on?

MR. LE VINE: Yes, your Honor.

I will call Carl Milliken.

Whereupon,

CARL MILLIKEN, JR.

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

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[597] Q And could you tell me what your duties as research director?

A I have three primary functions: basically I supervise the background research that is done for motion pictures and television production.

This in essence is a library function. We have a small reference library.

And I supervise a professional staff that utilizes our facility and the other depositories in the area in order to supply anybody connected with the preparation or production of motion pictures or television with the information that they require to fulfill their function.

Most of that information is visual, because people want to know what something looks like in order to duplicate [598] it.

My second function has to do with the recent establishment of a Warner Brothers research service which makes that same service on the part of my staff available to anybody, especially other people in the industry than Warner Brothers employees.

The third function is a quasi-legal function; in that I read all the scripts that are prepared in order to anticipate if possible any lawsuits that may be filed against Warner Brothers predicated on a violation of the right of privacy, libel, and right of publicity.

I also on occasion with the request of the Legal Department, make comparison studies of literary material to determine whether there is a possibility of plagiarism.

I think that pretty well summarizes my function.

Q All right.

And could you tell me what authority, if any, you have with respect to hiring employees in the research department?

A I have full authority subject to the review of the Labor Relations Manager, and within the form of the contractual relations that we have with the office employees' union that represents these people.

Q All right.

Now, can you tell me what authority you have, if any, with respect to the adjustment of grievances of the employees [599] in the Research Department?

A Our grievances are minor. I do adjudicate them as they come up.

As an example, we had a "dumb waiter" so called—an old-fashioned device which operated with a rope—perhaps some of you have lived in New York in the days when groceries went up that way—and this was a dangerous thing in that the rope kept breaking.

And people had a tendency of looking in to see where the machine was.

And at my insistence and on the complaint of people whose heads were about to be decapitated, we had a very expensive electric dumb-waiter installed.

By the same token, in recent times since the advent of the Burbank Studios, parking has become a terrible problem at Warner Brothers; and with only a little bit of insistence on my part, have I been able to get employee parking for my people.

They had to walk from Griffith Park to Warner Brothers each day to come to work because they couldn't find a place to park closer.

Q All right.

And did they question you—did they raise grievances concerning that?

A They complained very loudly, yes.

• • • •

[607] Whereupon,

MICHAEL CRICHTON

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

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[608] Q All right.

What authority, if any, do you have with respect to resolution of grievances that arise during the performance of your duties as director?

A As a practical matter I have a lot of authority. [609] Once again, I am not the employer; but I serve as kind of a final authority for MGM and for other issues that never reach MGM.

For example, we had an actor who, for personal reasons, had to leave the production before his scheduled time to leave, and we were able to adjust the shooting schedule—I was able to adjust it; so he was able to leave before he was scheduled to go.

Then there are ongoing problems with extras whose pay is determined on a scale according what kind of work they do, whether they represent a particular character or whether the character they represent is important to the film.

And the extras themselves will watch how they are placed in the film and try and decide for themselves how they are being used.

But in the end, it is the director's function to determine whether or not a character who may have been shot right in the middle of the screen, for example, is an important person or not.

We have a situation where two stunt men did a stunt, and I determined which stunt would go into the final film, which had financial considerations.

• • • •

[611] Q Where did Mr. Ellison call you?

A They both called me at MGM on the Sound Stage.

Q All right.

And what time did you receive that call?

A The first call was about 10:00 in the morning, and the second call was about 2:00 in the afternoon.

Q Did you recognize Mr. Ellison's voice?

A Yes, I did.

Q What did he say to you and what did you say to him, if anything?

A He called to tell me that I had been recognized crossing the picket line earlier that morning, and that the members of the Guild were very excited and very upset about the fact that I had crossed the picket line.

He said that he felt that it was necessary to make an example of someone, and I was going to be it.

The suggestion was that there was a good deal of personal animosity directed toward me. He said that I had better get out of there—out of MGM.

And I told him that I was only directing, that I was no longer writing, and that I felt that I was obeying the [612] Writers Guild strike to the extent that I could; which is to say that I had a contract to perform directing services and I had a Guild that governed that function.

And that Guild—meaning the Directors Guild—had told me to work or face damage suits. And so I was working. I was not writing.

• • • •

[613] Q All right.

And did you have any further conversations by phone with any Guild representatives?

A Yes, with John Furia.

Q About what time?

A It was about 2:00 in the afternoon.

Q On what date?

A The same day.

Q And where did he call you?

A He called me down on the Sound Stage.

Q All right.

And did you recognized Mr. Furia's voice?

A Yes, I did.

Q And do you know what position Mr. Furia occupies with the Guild?

A I think he is president elect now; I don't know what he was then.

Q Did you recognize his voice?

[614] Yes, I did.

Q All right.

And what did he say to you and what was your reply, if anything?

A Well, he was very sort of paternal, and he indicated that he understood the difficulty of my position, and he recognized how much I wanted to direct the film.

And how much effort I had put into it prior to the start of the strike.

But he said he wanted me to know that this was a very serious action in the eyes of the Guild, and that they were going to have to act very rapidly and with some force.

And that he wanted to make sure that I understood the situation I was in.

He said that I was virtually alone in my stand as a strike breaker.

And he named several other hyphenates who had respected the strike.

I repeated my feeling, that I was not writing but that I was only directing, and I had another Guild to govern that.

And I asked him about some other writer/directors whom I knew; and I asked him what they were doing.

He said that he didn't know what they were doing. And in fact, I knew perfectly well they were breaking the strike.

I told him finally that if "push came to shove," I would [615] rather be thrown out of the Writers Guild than the Directors Guild since I felt my future was really more with the Directors Guild.

And he explained that it wasn't that simple: that if I were expelled from the Writers Guild, that I couldn't work as a director in the future—work solely as a director because members of the Writers Guild could not work as writers for me as a director if I had been thrown out of the Writers Guild.

• • • •

[619] Q All right.

In your work as a director, how do you function in relation to writers?

Do you work with them in any manner, shape or form?

A Yes, I do, when there is a separate writer.

Q And would you describe how that works?

A Generally, it is accomplished through a series of meetings where the writer presents his ideas, or as the project progresses, his script or changes in his script.

And this material is discussed and further changes are talked about; and differing views from the director and the writer are reconciled hopefully.

Q Does this go on during production?

A This goes on classically in what is called "pre-production," • • •

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[622] CROSS-EXAMINATION

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[629] Q Now, with respect to directing a screen play, there comes time, does there not, in the direction of a screen play when a piece of dialogue has to be changed, and a scene might have to be altered.

Is that correct?

A That is correct.

Q All right.

Now, who normally performs that function?

A The director.

Q He changes the dialogue, alters the screen play?

A Yes, within a relatively small limit.

Q Well, let's say it is out of that "relatively small limit," then who would do it?

A The writer would do it.

Q In the case of an individual who has written the screen play and is directing his own screen play, he would do it?

A Should the situation arise, yes.

• • • •

[630] Q At the time of the strike, March 5th or 6th, you were advised by Harlan Ellison as to certain events, and you advised him that you would stop the writing?

A No, sir. I told him that I had stopped.

Q You had stopped the writing?

A Yes.

Q You had stopped the writing when the Writers Guild struck?

A Yes, sir.

• • • •

[634] REDIRECT EXAMINATION

Q (By Mr. Keaton) Did MGM require of you to perform any writing services after the commencement of the strike?

A No. And I told them well in advance that I would not. In other words, at the time I was doing revisions, I told Studio executives that I would not write further.

And no one asked me to beyond the start of the strike.

Q This letter of indemnification from MGM that you received, did it state that it indemnified you against being barred from working in the industry in the future?

A No.

• • • •

[639] Our next witness will be Paul King.

Whereupon,

PAUL KING

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

• • • •

[641] Q All right.

What authority, if any, do you have with respect to the adjustment of grievances?

A It varies; I have resolved grievances occasionally with certain of our series.

Q And could you describe the types of grievances which arise in the production process, or other activities in which you engage in in which you adjust grievances?

A As for example, an actor misbehaves on the series I generally get into that and can recommend his dismissal.

Q All right.

Are there any other types of grievances which you can adjust or have adjusted in the past?

[642] A There was an example a few years ago of an actor who felt during a sequence that the stunt man was a little bit too rough.

His agent indicated that they might sue the network; so I screened the film with the agent in question, and we agreed it really wasn't that difficult.

• • • •

[643] Q All right.

And could you tell me what authority, if any, he would [644] have with respect to the adjustment of grievances?

A I think you would have to define "grievance."

There was one instance when a film was being produced in Salt Lake City that utilized the use of helicopters; and one of the companies that supplied these aircraft, decided to increase their fee.

He arbitrated that since he was on the scene; and he informed them that they would have to abide by their original agreement—if that is a grievance.

Q Anything else that you can recall?

A There are very often disputes as to whom should play the lead or the secondary roles in these pictures; and he was directly involved in that.

Q All right.

And did Phillip Barry have similar duties to William Cayden?

A Yes. At that time he was Mr. Cayden's supervisor; and his duties were precisely the same with some more responsibility.

Q All right.

Now, could you tell me what the duties of Franklin Barton, who is described as vice-president, Program Development, are?

A He is responsible for the development of future programs for the network.

[645] My responsibility deals with current programs.

Q All right.

And could you tell me what authority, if any, Mr. Barton would have with respect to the hiring of employees?

A He has almost total autonomy in that selection.

He deals directly with all of the production companies, the indepents—the "creative community", if you will—and has full authority to decide who will do the various projects.

Q What authority, if any, does Mr. Barton have with respect to the adjustment of grievances?

A Again I think you would have to ask me what "grievance" would mean in this case.

There are so many different kinds of grievances that are involved in the production of pilots.

He could have a dispute, if you will, with the production company over whom might direct the picture.

He certainly would have the major voice in who was cast in these pictures.

If there are differences between the companies, he generally has the final voice.

• • • •

[662] CROSS-EXAMINATION

• • • •

[667] Q All right.

[668] Now, suppose he has given you the final draft that you Xerox or mimeograph, and you go into production and a scene becomes unworkable.

Do you have to contact that writer to change the scene?

A You may contact that writer. You have no contractual obligation to do so that I know of.

Q All right.

If the scene is changed substantially who gets the writing credit?

A The Writers Guild of America automatically arbitrates any writing that is done within a production company.

So the decision, in other words, is the Guild's; no one else's.

• • • •

[669] (By Mr. Goldman) I take it that the options that are open for a production company is to seek out another writer to make the substantial changes or to use their in-house writing ability to make the changes.

Is that correct?

A Again, if I may, you are making the assumption that what you have just described is a major rewrite.

Invariably this is not the case at all.

By production problems, I mean that the script is over [670] budget, one scene that was written night for night cannot be shot that way because of the extraordinary calls that effects the next day's production, and—

Q All right—

A There are those—it is a technical thing, in other words—

Q Do you know what the A through H functions are?

A Yes, I do.

Q All right.

Now, other than the A through H, are the writing functions that I am talking about.

Let's say you have other than the A through H writing functions which would have come under the Writers Guild contract?

A Yes.

Q Those are the functions and writing responsibilities I am talking about.

Now, assuming at that point in time that there has to be one of those writing functions to be performed, I take it you have the option of going out to get another writer or use in-house writing?

A If it is other than A through H. The script would never be mimeographed final because it would not be acceptable creatively to the various people involved.

At that point, you do have an option to bring in another writer, or to do it with the personnel that are on [671] your own staff.

• • • •

[719] Q (By Mr. Goldman) Will you please describe a rewrite to us?

A A rewrite is generally a structural change in a script that is purely creative.

[720] Q Would you explain a polish to us?

A A polish is a very minimal alteration of a script, or even a scene; it doen't necessarily involve a whole play.

Q Have you read the collective bargaining agreement which is General Counsel Exhibit 2, page 70, A through H category?

A I have.

Q When you were referring to polishes and rewrites earlier, I take it it does not include the A through H category?

MR. KEATON: Objection, your Honor.

This is a conclusion of law again.

Furthermore, there are other provisions of this contract that makes the point, I think—and it also provides for exclusions from writing.

It is not just A through H.

This witness would have to be in your position to make those decisions.

JUDGE: Well, as of the present moment, the question to the witness is, if I understand it, when he testified to polishes, was the matter he was referring to contained in A through H, or was it not.

Is that your question?

MR. GOLDMAN: Yes.

JUDGE: I will take the answer to that.

If you understand what I am saying?

THE WITNESS: Well, if I can phrase this with my own [721] semantics, based on my own experience, and I can't comment to all the other individuals who perhaps interpret this in many ways.

But in my opinion, a polish relates to A through H and a rewrite does not.

A rewrite involves substantially more writing in a creative sense.

What is described in A through H relates to production problems that I alluded to earlier, and in my opinion, that is "polish."

Q In your opinion, as I understand it, A through H is denoted as polish in the industry, or just—

A In my own mind, the way I used to work when I was dealing directly with these things.

Q All right.

And a rewrite denotes something other than the A through H—a substantial change?

• • • •

HERBERT WRIGHT

[734] DIRECT EXAMINATION

• • • •

[735] Q What are your duties as associate producer?

A To—my duties as associate producer are, that I work as actually the producer's right arm and am engaged in all phases of the production from pre-production to post-production.

I operate in the field as a liaison between the producer and the actors, the producer and the director, the producer and the production crew, and the producer and the studio.

[736] I—if he has a problem that comes up on the set—for instance, if an actor doesn't like his lines or doesn't like his wardrobe, or he is unhappy with his dressing room, or the art director decides that the director isn't fully utilizing the set, or anything of that sort, then I have to settle that—that problem so we can go on shooting the film.

As well as I am involved as far as the scripts are concerned.

I am involved in reading that script, seeing how it fits the budget—you know, production problems.

And I am involved in whether we can shoot in L.A. or shoot in New York, or whether we can shoot it, you know, all in one day, or what is on the shooting schedule. And adjusting that.

Q You mentioned that you adjust various problems that arise.

Do problems ever arise with respect to extras?

A There are problems as to how many extras the director is allowed to have.

In other words the budget may say he may have 15 extras when he wants 300; that happens quite often.

Q All right.

And do grievances ever arise with respect to extras' pay that you would deal with?

[737] A Yes. But generally I am the last in the line to get involved with the extras' pay. Usually it is the assistant director, or the unit manager.

If they have a problem that they cannot meet, then they have to come to me. Generally I try to free the producer from the day-to-day, you know, trivia and tedium of his problems so that he can go on either producing the show over all, or produce the next show, for instance, in a T.V. series.

Q All right.

And do problems ever arise with respect to stunt men that you would resolve?

A Yes, they have.

Q And could you describe the types of problems?

A Well, I could describe the particular problem I have had.

Would you prefer that?

Q Yes, please.

A Well, we had a problem with—on "Cool Million" with James Farrentino where the stunt man was supposed to do the stunt—hanging from the ceiling of this room—and Mr. Farrentino decided that he wanted to do the stunt himself.

This was on the first couple of days of shooting, and it was against the studio policy for an actor to do a very dangerous stunt that we can't finish the film on.

In other words, he might be injured.

[738] Or that it simply will not look as good as the stunt man doing it.

So I had to adjust that problem, and—

Q How did you adjust it?

A Well, first of all, it turned out he did not like the stunt man, so I recommended we hire another stunt man.

So they hired another stunt man to replace the former stunt man.

• • • •

[739] And are you a full member of the Writers Guild?

A No. I am an associate member.

Q All right.

MR. LE VINE: Can we go off the record a moment?

JUDGE: Off the record.

(Discussion off the record.)

JUDGE: Back on the record.

Q (By Mr. LeVine) Did you have a conversation with Allan Griffis by telephone just prior to the commencement of the strike?

A Yes, I did.

Q All right.

MR. LE VINE: General Counsel would offer the stipulation that Mr. Wright spoke with Allan Griffis just before the strike, and it was the day that he received the strike rules.

And he was told by Mr. Griffis that as a member of the Guild, he would have to obey the rules.

And if he "scabbed" he would be expelled and no writers [740] would be able to work with him.

MR. GOLDMAN: I so stipulate.

JUDGE: Do the rest of you gentlemen join in that stipulation?

MR. KEATON: So stipulate.

MR. MILLER: So stipulate.

JUDGE: All right.

The stipulation is received.

• • • •

[742] Q (By Mr. Keaton) Mr. Wright, how did you come to join the Writers Guild in August of 1972?

A Well, last year I was employed as an associate producer on a T.V. series called "Cool Million."

Q "Cool Million"?

A Cool Million, which was part of the Wednesday night mystery movie series for NBC.

I had previously been employed as an associate producer on "Night Gallery."

And due to the peculiar problems of production on Night Gallery,—that is, doing three or four segments stories inside of one hour—one-hour show format—and

of course, a lot on locations as well as on sets, they chose me to go on "Cool Million" because I was to work as an associate producer underneath the producer, who was in fact, producing two or three shows at that moment.

And therefore, would need an associate producer to be [743] more active than just a person who would be an assistant.

In the course of that employment, several scripts came up where normally the producer might hire the writer to rewrite or polish the scripts in order to meet peculiar production problems, such as the show was supposed to be shot on the French Riviera, and we shot it on the back lot.

And another show was supposed to be shot in the Carribean, and we shot it on the back lot.

And another show was supposed to be shot in North Africa, and we shot that on the back lot, and out by Palmdale in the desert.

Unfortunately, all of the scripts have been tailored in oder to be shot in the locations to employ specific landmarks and nationalities; and since we didn't have that at our disposal here in the Los Angeles area, we had to make certain changes in order to actually cut the budgets in half.

So they asked me to make those changes, and I made those changes.

And therefore, I had to join the Writers Guild. And I got a letter from the Writers Guild, informing me that I had to join the Writers Guild; so at that time I joined the Writers Guild.

• • • •

[744] And what kind of work did you do when you were rewriting [745] these scripts; what did you do with them?

A You mean specifically?

Q Yes. How did you change them?

A Well, I had to change the locales of which the action took, and one of the scripts we had a minaret, and a man was being chased around the minaret, and then on the castle walls.

And he jumped into a helicopter, you know, which landed inside the temple walls and took off. Well, we figured, you know, basically, that it would probably cost the entire budget of the picture for a 10-minute scene.

So we then changed it so that it wouldn't happen that way.

So that it would happen on the ground and the helicopter did not have to be seen flying over the walls and over the desert.

We would just have a helicopter sitting there and a guy jumps, and then we cut, and then we are someplace else.

In another instance I had to change—there were "hells" and "damns" and censorship things that the broadcast standards of the network had asked for changes.

So I simply deleted those. It was a matter of editing. Those were the kind of scripts—

Q Did you write any new dialogue for the picture?

A Occasionally.

• • • •

[747] Q Were you ever gien an opportunity to vote on the adoption of the strike rules themselves?

A No, I was not.

• • • •

[748] Q All right.

And did you ever attend a meeting in which Mr. Saunders was present—a meeting of hyphenates?

A Yes, I did.

Q And did Mr. Saunders say anything at that meeting as to what had happened to his efforts to resign from the Writers Guild?

A He was—he had written the Writers Guild and the Writers Guild had corresponded back that he would not be allowed to resign because he was a member of the Writers Guild.

And—I can't remember exactly the reason, but the text was that they might consider his resignation after the strike, but certainly not before or during the strike.

Q And do you recall—excuse me—how did you happen to go to that meeting?

A I was invited to the meeting.

Q By whom?

[749] A Bob Cinader's office at Universal; he is also a hyphenate at Universal.

Q All right.

And is it your understanding that you were asked because you were a hyphenate?

A Yes.

Q The other people at the meeting were asked for the same reason?

A Yes.

Q All right.

Now, how many people were there, approximately?

A At which meeting?

Q The one Mr. Saunders made the statement that you just testified to.

A At least 60.

Q I beg your pardon?

A 60, at least.

Q All right.

And did Mr. Saunders make any statement at that meeting just to you or was it a general statement to everyone present?

A Well, it was said generally, you know, in the course of the discussion because several people there were in the same situation of having not written for several years, and yet were expected to observe the strike rules —particularly the strike rule of not being able to cross the picket line.

[750] So it was said in a general mannor, and not just to me; althcugh I was sitting next to him.

Q In other words, Mr. Saunders spoke out loud, is what you are saying?

A Yes.

• • • •

[CROSS EXAMINATION]

[768] THE WITNESS: I called the Guild because, since I was a member of the Writers Guild, and they were going to go on strike, and I had received a copy of the strike rules, and at several points, it seemed to

me they were in contradiction with my present employment at Universal as associate producer on the theatrical motion picture "Newman."

I asked him specifically, since I had not been employed to write, nor was I writing, nor was I asked to write, nor did I expect to write in the future on that project in particular, since that was what my employment was, how did the Writers Guild rules affect me?

Was I going to be in violation of the strike rules if I crossed the picket line to work?

And that was an inevitability because at least a good portion of the—not a good portion, but a small portion of the schedule was on studio set which were on that lot.

And he replied at that time "yes" that I would be in violation of the strike rules if I violated the picket line by crossing the picket line; and I would therefore be referred to the Disciplinary Committee, and I would very likely be banned from Guild membership.

And that if I were banned from Guild membership, that it would affect me in the future as a producer because other [769] writers who were members of the Writers Guild would not be allowed to work with me.

Q All right.

And that is what you said to him and what he said to you?

A That is what he said to me. And I said, "Could there be no exceptions?"

And—

Q Did Mr. LeVine ask you the same question basically I asked you?

A Yes, he did.

Q All right.

Now, I would like to ask you—did you explain to Mr. LeVine just the way you explained it to me?

A To the best of my knowledge, yes.

Q Did you use the statement "If I scabbed, I would be expelled, and no writers would be able to work with me?"

A I do not remember if I said that exactly, no.

• • • •

[775] Q Is it not true that at the end of January, 1973, you wrote a teleplay?

A I rewrote a teleplay.

• • • •

[792] Q All right.

And what kind of responsibilities—authority does he have in relation to the handling of grievances?

A Usually quite broad responsibilities.

I know that there are grievances that are handled on the set, and the fact that I can't be too specific to me means that he is handling grievances on the set without coming to the front office.

Specifically, he does handle things initially like tentative writing credits, credit to others, grievances over pay.

• • • •

[793] All right.

What function does a director perform in relation to employment of people—the selection and so on?

A He performs a very large part in the employment of people that he wants to function in his crew.

Q Could you give us some examples?

A Specifically, the director would more than likely, be [794] allowed to hire his choice of director of photography, for editor—all of the key people—production designer,—

Q Does the producer select any personnel?

A The producer will also participate in the same discussions with the director.

He would perhaps choose his associate producer. And initially he may have chosen the writer.

He may have a voice in choosing the production manager and the location auditer.

Q All right.

Do producers have occasion to negotiate collective bargaining agreements on distant locations?

A I'm sorry?

Q Do producers have occasion to negotiate labor contracts on distant locations?

A Yes, they do.

Q And how does this come about?

A The need to—if you want to shoot a picture in certain areas, you need certain agreements with various of the locals in those areas.

So he is allowed to negotiate with those locals under the supervision of our Labor Relations Department.

• • • •

[834] ADMINISTRATIVE LAW JUDGE BARBAN: On the record.

Gentlemen, over the evening and this morning, I have given further consideration to the procedural problem concerning the availability of General Counsel's notes to Respondent.

The cases that I have read confirm my opinion that notes taken by an Agent of the General Counsel which are in fact substantially verbatim, come within the definition of a statement—witness's statements in the Board's Rules and Regulations.

The cases further confirm my understanding that these matters are to be—that these notes are to be considered by me In Camera to determine whether or not I consider they are substantially verbatim.

• • • •

[837] MR. LE VINE: I will call Staney Robertson, please.

Whereupon,

STANLEY ROBERTSON

was called as a witness by and on behalf on the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

[839] Q What authority, if any does the producer have with respect to the adjustment of grievances that arise in the production of a television program?

A The producer normally is the man who has the final authority with—if there is a grievance with the

cameraman or writer or associate producer, or something, the producer is the man who is supposed to solve those problems.

And if he can't solve them, then he has obviously the right to terminate the services of one of the people involved.

• • • •

[841] Q All right.

And what authority, if any, would this category have with respect to the adjustment of grievances?

A Very simply: when there is a grievance on a program, which may affect that program's deliverance or quality to NBC, we ask that the program people become involved to try and solve that problem so that A, we don't lose production, or the production quality is less than what we expect it should be.

Normally it is—he is in the role of a peacemaker because it is like dropping a stone into a pool of water. Many times what appears to be a minor thing can have a tremendous effect.

But what we try to do, and what I try to ask that the program people do is that they work in it as a peacemaker and try to settle it as amicably as possible.

Now there may become a problem in which they can't settle it, the producer can't settle it, and maybe I become involved and try with the head of the studio, or the executive [842] producer, whomever.

And we try to normally solve it for the best interest of both parties, the supplier and the television end of it.

• • • •

[848] Whereupon,

FRANK R. PIERSON

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

• • • •

[849] And of course, casting the actors. Just generally getting the picture made.

• • • •

[850] Q What authority, if any, did you have with respect to the adjustment of grievances?

A Well, I would either arbitrate the discussion of a grievance if it came up between two members of the staff, or if it was impossible to get the two men to agree, then just simply step in and make the decision myself or accomplish whatever needed to be accomplished myself.

Or in the extreme example, I would probably fire the —one or another of the personnel and replace them.

Q All right.

Now, could you give us some examples of the types of [851] grievances that arise in the production of a film in which you—which you resolved?

A Well, I'm trying to think specifically in connection with this, Mr. LeVine.

There was—for example when I was—when I had been going to direct this picture myself, I have made an informal commitment to a particular cameraman.

And when I subsequently became a producer and hired a director to replace me as director, I discovered that this director was unwilling to work with the cameraman who I had—and not actually employed, it hadn't gone that far —but I let him know that I wanted him to work the picture.

So they created what certainly seemed to me to be a grievance, and that the cameraman felt he needed the reassurance or security he would gain from working with a—I mean, the director needed the security that he would get from working with the cameraman with whom he was familiar.

It was resolved by—in this instance by me meeting his cameraman, and agreeing that his cameraman was equally competent; and I finally decided to go along with his cameraman.

That is the only specific grievance that I can think of offhand, although I could probably think of others if I—

Q Do grievance arise with respect to actors?

[852] A Inevitably. And the—of every type and kind, and specifically on that show where we are confronted with endess problems in grievances in connection with the star, George Peppard.

Q And could you describe those grievances, please?

A Oh, the—well, at one point there were some aspects of the script which he did not like.

These were discussed indirectly and in conversations between Peppard and me, and also in a number of memos that he wrote to me in breaking down the script and so on.

Some of these I just simply disregarded. In a couple of cases, I felt that he was right. And prior to the strike situation, I had those sections of the script rewritten.

There were—and then there were other areas in which I just chose to overrule him.

There was a matter of his—he wanted to have his clothing for the picture made by the studio, and which clothing, of course, he would keep after the production.

And I refused to allow that to happen.

He wanted to have his own—to have both a limousine and a studio driver and a self-propelled dressing room—what do you call it—that have an Indian name—they are a kind of self-propelled camper—

Q That's okey.

A But they are commonly available and rigged as dressing [853] rooms and sleeping rooms, and so on for the use of the stars.

And he wanted to have that instead of a trailer. And the problem there being that we would have to have two drivers, one for the self-propelled number and one for the limousine;—and The Teamsters come very high.

So I overruled that also.

• • • •

[855] Q All right.

And what did you say to him, and what was his reply, if any?

A It was a very lengthy telephone call and very argumentative, and—

Q Could you please tell me what he said to you?

A I will try to give you the gist of the conversasation.

I pointed out to him that—first, I explained in the simplest possible form that I could, what I was doing; that I was producing a film for Universal which was fully prepared in the sense that the script was totally finished.

And that there were no more writing services to be performed on that Monday or by anyone else.

And that I had a personal services contract to produce that, and that I wanted to go ahead and do that.

But my understanding of the work rules as I received them in the mail, and as they had been explained to me by him was that the Guild was taking the position that I should not cross the picket line in order to perform any functions.

And he stated that that was correct. And I argued that in the first place, I did not believe that the Guild had any authority to tell me what to do outside of my function as a writer.

Or in those aspects of my producorial function in which I would be working directly with the writer.

[856] But it seemed to me that this situation was unusually clearcut, and that I would be able to—and I promised him and I subsequently did—furnish the Guild voluntarily with a copy of the final shooting script which I intended to produce exactly as it was.

So that they could compare it with the shooting continuity at any later date to see whether or not anyone had indeed done any writing.

And I pointed out to him that furthermore, that the best guarantee that the Guild could have that no further writing would be done on that project would be to have a loyal member of the Guild in the producer function.

Mr. Griffis argued each point simply as a matter of appeal to individual conscience as a writer.

His attitude seemed to be simply that a loyal member of the Writers Guild would not cross the picket line to perform any function at the studio even including the hypothetical case I raised within the—what if they were

a plumber who also happened to be a member of the Writers Guild who is called to fix the pipes at the studio?

And he said, "He would be expected to respect the picket line."

Q All right.

Was anything said with respect to what would happen if you did cross the picket line?

[857] A Yes. He made reference to the clause in the strike rules which specifically threatend reprisals and punishments of various sorts for anyone who violated the strike rules.

• • • •

[870] REDIRECT EXAMINATION

Q (By Mr. LeVine) When did you complete the writing that you performed for Fox?

A It is not completed, Mr. LeVine, because I was unable to do any of the work because of the strike.

May I explain?

Q Yes, please.

JUDGE: Yes.

THE WITNESS: All right.

That payment was in advance to secure a contract for the writing—for writing services.

They paid me that money and the strike came down almost immediately, so at least in the official sense, I have had no further conversations with Fox.

And in any official way I have done no writing.

• • • •

[891] MR. LE VINE: I will call Sidney Kalcheim.

Whereupon,

SIDNEY KALCHEIM

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. LeVine) Please state your name.
A My name is Sidney Kalcheim.
Q What is your address?

A I live at 18283 West Wakecrest Drive in Malibu.

Q All right.

Where are you employed?

A I am employed by Screen Gems at the Burbank Studios.

Q In what capacity are you employed?

A I am the executive assistant to Arthur Frankel, the vice-president in charge of the studio.

[892] Q All right.

And how long have you held this position?

A For one year.

Q And could you tell me what your duties are?

A My duties involve negotiating deals for writers, directors, producers, acquisition of rights, overseeing the general managerial and administration of the studio as delegated to me by Mr. Frankel, as well as other productions and post-production duties.

And it also includes settling grievances and problems, and being a general troubleshooter as things come up.

Q All right.

In the course of your duties—well, let me ask you, what authority or responsibility do you have, if any, with respect to the hiring of employees?

A I make recommendations as to material writers that come in; and most particularly with regard to new projects that come through the development area.

And—

Q Are your recommendations generally followed?

A Pretty often, pretty often—most often.

Q All right.

And what authority, if any, do you have with respect to the adjustment of grievances of employees?

A When something comes up and I am asked to I get into [893] it, particularly since we are talking about writers with regard to Writers Guild members, a couple of things have come up in the past year with regard to credits and with regard to disputes as to submitted material.

And through my own good offices and knowing the people involved, I have talked with them, and we have gotten things straightened out as they should be.

That goes the same way for things that happened within the studio.

Q All right.

Are you a member of the Writers Guild?

A I am a member of the Writers Guild—associate member.

Q And how long have you been a member of the Writers Guild?

A Since 1959.

Q All right.

Now, in the course of your duties as executive assistant to Mr. Frankel, do you write any scripts or perform any writing services in the course of your duties?

A No, I don't.

• • • •

[931] At this time, Your Honor, the Association proposes the following stipulation: that on or about February 2, 1973 the Guild by letter reactivated all members who had withdrawn from the Guild within the preceding two years, and that an authentic example, excuse me—an authentic example of the Guild's reactivation letter is contained in Association's Exhibit Number 5.

JUDGE: Mr. Goldman?

MR. GOLDMAN: I will so stipulate.

• • • •

[957] MR. GOLDMAN: That is correct.

JUDGE: All right.

Mr. LeVine, are you in a position now, to rest your case?

MR. LE VINE: Yes, I am, Your Honor.

JUDGE: So you rest?

MR. LE VINE: I do.

JUDGE: Mr. Keaton?

MR. KEATON: We would like to offer a stipulation which we have discussed during the recess. I would like to offer to stipulate that if Mr. John Mandonza, resident Council of the Guild, were to testify in this proceeding, he would testify as follows:

That it is one of his functions to present evidence on behalf of the Guild at the Guild's disciplinary proceedings.

And that he has taken the position at the disciplinary proceedings brought by the Guild against persons holding the positions listed in the complaint in Section 6; and that such [958] persons are subject to discipline for crossing a Guild picket line without regard to whether they cross the picket line for the purpose of performing bargaining in its services for a struck employer or not.

And that the charges will properly lie for crossing the picket line even if the perseon charged has given assurances to a representative of the Guild that he is not and will not perform any ranking services for the struck employer.

MR. HACKLER: It is so stipulated upon the condition that you vindicate the subpoenas.

MR. KEATON: That is my intent.

MR. HACKLER: Addressed to Mr. Mandanza.

JUDGE: All right.

Now, just one fact; you have a copy of the complaint before you?

MR. KEATON: I do.

JUDGE: You referred to certain categories as appearing in paragraph 6—

MR. KEATON: Excuse me, Your Honor—

JUDGE: —and I rather suspect you meant paragraph 9.

MR. KEATON: Thank you very much, Your Honor, I did mean 9, and if Mr. Hackler will—

MR. HACKLER: I will accept that change.

MR. KEATON: Thank you, Your Honor.

JUDGE: Any objections to the stipulation?

[969] Call your witness.

MR. GOLDMAN: I would like to call Mr. Coon to the stand.

GENE L. COON

was called as a witness by and on behalf of the [970] Repondent and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

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[975] And if we like it enough and we think it works, we say to him "okay, you have got the story deal. Go home and put it down."

And at that moment the writer is employed, and at that moment hopefully the writer goes right back home to start to write that story.

He may well have to finish another script before he writes that story but he won't tell us that. In about five or six days the writer will come back with what is known as a story outline or treatment.

A story outline is telling in prose—not screenplay form but in prose of the story line—the action, the dramatic incidents—without dialogue that would eventually and hopefully be translated into the screenplay form.

Now—

[982] MR.GOLDMAN: Could you shorten the issue a little bit.

Q (By Mr. Goldman) Could you describe for the record, Mr. Coons, the process which a writer, producer and story editor goes through to arrive at a treatment or story outline?

A It is four words: a joint creative effort.

A premise is never complete; a premise is an idea. The writer who comes in usually does not know the show. He does not know the characters and he does not know how the characters will react given a situation.

He may not even know the format of the show even though [983] the basic formats of television series are pretty well cut and dried.

The writer comes in, and in the process of a multi-hour story conference, that premise is expanded and adapted verbally, unless there is a secretary present which there sometimes is, into the bones of a story outline.

The story outline though it is talked out and generally constructed in this verbal dialogue between these two or three people—the producer, the story editor and the writer—the story outline itself is then written over a period of five to six to ten days by the freelance writer.

And that is, assuming first of all the producer manages to convince the network that they should allow them to go ahead with this sort of premise; they usually clear a premise with the network.

Given the passage of—

Q Could you explain to us what you mean by "clearing the premise with the network?"

A Well, virtually everything on television as far as the programming—the program content must be cleared by two departments at a network, the network continuity acceptance or whatever the name may have at the various networks and the network programming department as represented by an assigned contact of that series.

Every story premise must be okayed by them; every completed [984] story outline must be submitted to them and okayed. And every, hopefully completed script—and I say "hopefully" because scripts odd enough are almost never completed in a very real sense—the completed script too must be okayed, and the various objections and changes that the networks raise must be accomplished after the conference with them.

And this is usually done by telephone or memo.

Now, at the conclusion of the story conference, the writer goes home and he comes back in five days later with something very much like this fifteen pages.

And—

Q And when you say "this" you are referring to Respondent's 5?

A Respondent's 5, yes. Almost never in my experience has a first draft story outline come in that is acceptable. I don't know why this is; possible because none of those writers write like I do. That is my ego operating.

And maybe it is because it is off—it doesn't fit the story, doesn't fit the format of the show.

He might have done some things that I as a producer know will not be acceptable to the network or the studio executives—

Q Such as?

A Well, on the series "It Takes a Theif", for instance, I was line producer; I had two associate producers, one of whom were the story supervisor and one of whom was

primarily a [985] production man. And I had an executive producer. At the beginning was a gentleman named Gordon Oliver, later on it was a gentleman named Jack Arnold.

And then there are gentlemen further up the line—and I utilized Universal at this time—citing(?) a man like Frank Price to whom Gordon Oliver would have been responsive to.

Seldom did Mr. Price come into play during the story portion of this, although he usually was apprised of the premise. And if he liked it then he would pass the word on down and say "fine, go with it."

Now, the first draft of a document similar to R5 would come in and I would call my story editor in if I had one, or I would do it myself if I did not, and have a meeting and work on it and see what changes had to be made in it to make it—the blueprint of what we would conceive to be a satisfactory screenplay.

Q Could you stop there for a moment.

What happens to the freelance writer who has turned in Respondent's Number 5 to you; has he been paid for Respondent's Number 5?

A He will be paid—I've never been too much involved with these administrative details, but he would be paid on delivery of the—I believe of the first draft of the story, and possibly on the delivery of the revisions which are usually [986] minor. That is a story payment.

And in the writers breakdown we have a story payment, a first draft payment and a final draft payment. That is the story payment, which was up until recently $900, I believe.

Now, it is conceivable incidentally that if that story comes in in such bad shape in its first draft—or even its revision—and I make the judgment that this writer is not goting to "cut it," and I made a mistake, that the story doesn't work, then I might very well exercise what is called a "story cut-off."

He would get his money and the story would be shelved or assigned to someone else.

In the case of the shows I usually—I produce, when a story cut-off is exercised, ordinarily if I want to use it, I would never assign it to an outside writer.

In the interest of economy I would do it myself or have a story editor do it.

But lets assume that it is a pretty fair first draft of a story outline and I have had my meeting with my story editor. We call the writer in and we tell him any additional changes we feel need to have to be done before we can submit it to the network and to the executives.

Hopefully these are minor; and indeed they usually are.

Two or three more days later he will turn in essentially R5 which is our first and second drafts of a story outline.

[987] Now at that point I have no right as producer or story editor to ask anymore work on that from the writer. He has committed his contract—he has fulfilled his contractual committment up to this point.

If I have some minor changes I would like to have done in this, I will make them or my story editor will make them before we submit them to the network.

We may do this for many reasons. We may do it because we feel that the person who it will be submitted to personally will like it better.

I must be honest with you when I tell you that we will occassionally put in something we know that they are going to take out; because that makes them feel useful, and I certainly think that they should feel useful.

And the script being adjudicated okay by me and my story supervisor and the executives of the studio, it will at this time be submitted to the network for approval to go ahead with the screenplay.

And by this time it usually gets an approval.

There are cases, of course, where a story might be totally innocuous one day and get an okay and the next day on the news the President is assasinated, and that is what the story is about and you're going to use "story" obviously.

But generally speaking at that point the network gives its okay with certain cautionary memos sent in, such as "be careful [988] of no open mouth kissing," and so on. And at this point with any luck at all you call the writer in and you say, "all right, go ahead with the screenplay."

Now I would point out that what I gave you is one script. If we are starting a series we are doing this with 12 writers or 16 writers or 22 writers; we have them all going at once.

So the first three or four months of preparation of a series really is based on getting the writers in, getting the script written, getting the stories okayed and getting the scripts written, and basically having something to shoot from.

Q Usually, when does the first three or four months of a new season commence?

A I would say from about April to possibly July—I would say you had better start shooting your show in July, I would suggest, or you are going to have trouble making September.

I would say that under optimum conditions—let me make that average conditions—if your writer doesn't bomb out on you and you are a capable man and you have got good peple working for you, then about 10 weeks from the day of the first interview with your writer you will have the scripts ready to shoot.

And that is assuming nothing terrible goes wrong, which it usually does.

At any rate, we now have a writer writing a screenplay. Hopefully you have got 12 or 15 writers writing a screenplay.

[989] Now, when he turns in his screenplay you have got a story that works. And if he is a skilled professional writer he will make the story work because the story does work.

Nonetheless in the 100 or 125 television show that I personally have produced I never have had a first draft screenplay come in that I could shoot or anything like shooting.

They always need rewrites. At this time when he submits his script, and this is usually two or three weeks after I have told her to go ahead on the script, I will take the script and give a copy of it to my story supervisor if I have one and we will read it and root about it for a few days and then we will come in and have a conference.

And then we will point out the various weak points that we have discovered and we will reach a conclusion

and a meeting of the minds and—as to what should be done to the script in the rewrite stage; at which time we call in a writer and get in a fight.

Because no writer likes to be rewritten. He wrote it the way he wrote it because he though it was right.

Now, we don't think it is right; we know our show. And so ordinarily we have a little unpleasantness, but you try to make it as pleasant as possible. And hopefully you conconvince the writer that these changes shall be done.

Now, I can recall many times when I couldn't convince a writer, and he said "I won't do it" and I said "Well, suit [990] yourself, because if you don't I'm going to." And that usually does it; they usually will.

In the course of this really third meeting by now, the writer is zeroed in pretty well on what the production unit is requiring of him. And if there are no major difficulties such as structural difficulties, for instance, which can pop up in the first draft screenplay that you didn't notice in the story, he will have a—I guess we call it a "second draft" back in a week or so.

And the same process will happen again. And then we go to the producer and the story editor; because we are entitled to, yet, one more process with the writer—the polish, which is the final process.

Now, this is all very evoutionary. In most cases in television—and there are few exceptions—the production executives would deal with the writers—four writers who are serving in additional capacities. And I think the reason for it is because the whole step is a created process.

It is a brainstorming session, and—well, I've often said that if you had a tape recorded going on at one of these story sessions, that at the end you would have a story written if somebody would transcribe it with proper editing.

At any rate, at the end of an evolutionary process you have what you fondly believe is a final draft screenplay—teleplay—and paradoxically enough this is the point the [991] writing begins. I know that sounds very strange.

When a screenpay comes in after polish and after the story editor and the producer have gone over it and made any pencil changes they want to and bring it up to what they consider perfect at that time, not knowing the

problems which will develop in the future, he will take the author's final draft, duly annotated and amended, and submit it to the mimeograph department and get mimeographed copies out at which time he will distribute it to his production staff; which is usually—in my case is always studio-assigned—to his story editors, the associate producers and the executive producers and the officers of the corporation who are on a list.

And I would say the usually distribution at this time is about 25 copies. Now, at this point the producer and the story editor have run out of writer. The writer has done his best, we must assume, to bring that script upto the condition that the producer and the story editor want it to be.

He has completed his contractual committments.

And then to our great dismay we find out three days later—a week later—that there are changes to be made. And this is the process that sometimes is downright staggering, there are so many changes to be made. And—

Q You said that the writer's committment is ended?

A After a story first draft, second draft and polish.

• • • •

[1012] Now let's assume you have handed in the final teleplay with polish and the rewrite and your services are no longer required, do you as a writer—have you ever been callend back by a studio to engage in the rewrite services?

A On my own property?

Q Yes.

A After I have gone through the usual steps?

Q Yes.

A Possibly once or twice in 300 times; I'm not sure, I can't remember.

• • • •

[1164] Q Assuming that next step is completed, then what follows?

A I will then do the rewrite that is involved and this might vary from very simple rewrite to a very extensive one, [1165] depending on the problems that appear in the material.

I will submit that and that is commonly called the second draft.

After that we will go through exactly the same process except it will be on a more limited scale. That is instead of dealing with larger issues such as the interrelationship of characters and the defining of the running characters and the plot line of the piece, the next revision which is generally called the polish for the writer, generally deals with just that, polishing, honing the material. Trying to make the dialogue better, more satisfactory. Trying to make it—trying to make your effects more dramatic. Trying to meet very specific production problems that may arise and generally just honing the work.

• • • •

[1178] Q As story editor did you hire writers?

A I recommended writers. That is I had told Jerry Thorpe and also the executives at Warner Brothers that I was going to be extremely particular in the selection of writers for this series because I thought it was a very exciting one and I wanted to find a certain freshness of approach. I also thought it was a very difficult show to write.

I would recommend therefore, writers. I read masses of material because even though I was familiar with most of the writers in the business, I wanted to read specialized material and I asked for particular kinds of material so that I would have some evidence that the writers who I thought would be suitable, were indeed suitable.

I then would recommend writers and as far as Mr. Thorpe was concerned, there was never any disagreement. People who I recommended he approved and people I did not recommend he did not suggest any one other than the people I did recommend.

There were however, some rejections from the network which was ABC. That is they did not wish me to employ certain writers.

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[1179] Q Could you explain the process you went through with hiring or recommending to hire these individuals?

A Yes. From my own recollection; from my own experience with other writers and from recommendations that came from agents I would in effect compile a list of writers who I thought would be valuable.

• • • •

[1180] Q Now with respect to the individuals you selected, what next occurred?

A As this show had never been on the air except in a 90 minute version—this is an hour series—it had never been on the air and because I wanted to make some very specific demands on the writers, I would call the writer in and show him the pilot and then discuss in great detail what I thought the show was about; what I wanted from them; the kind of story; and particularly the tone of it.

I perhaps should speak about that a little bit.

• • • •

[1182] I would tell the writers that because I had selected [1183] them with such particular care, that I expected them to write a script. That is I would help them to get through the stage where normally they would be or might be cut off with an option.

That is I said this both to express a confidence in their ability to do it and recognizing the fact that I thought it was a tough show to write and especially under the time pressures we were under and that I was therefore volunterring to help them to the maximum extent possible.

We would then sit down and in most cases find a premise between us. In a few cases writers came in with a premise in mind by which I mean a springboard, something to generate a story.

Q Excuse me. Does that mean you recommended the hiring of these people without a premise?

A Yes.

Q Okay.

A When we found the premise that I thought might be productive and which was or seemed to fit our series,

I would generally spend some time with the writer beginning to explore it, and hoping also to generate some excitement in him, believing as I think many people do that if you can excite a writer about the material, that he will do a better job.

The writer would then go home and develop—I encouraged the writers to come back before they had written their outline, [1184] to come back and discuss it with me verbally.

I told them that this would possibly save us both time and most of them were very anxious to do that and we did in most cases, did that.

In the first four outlines that came in I was very unhappy with all four of them which is not unusual because we all have expectations higher than possibly usually. On top of that I was at the same time having a great deal of difficulty with ABC in terms of the one script which was my own.

Somewhere along here I completed my script.

I was having troubles in terms of the concept of the show and some of the things that I was enunciating to you before in terms of where I wanted that show to go, the tone of the show, and the proportion of action—physical action in it as opposed to the flashbacks which generally were very static.

In coping with the problem which I first enunciated, that is that we had a man—a peaceful man—who was capable of extraordinary and rather excitingly visual violence, and in a very violent time and place and where that tension was the essence of the series.

As a result of both of those, my disappointment and the problems I was having with ABC, I then in each of the first four outlines, wrote very extensive detailed memoranda—I dictated them.

In most cases the outlines that came in varied from [1185] around 12 to 25 pages—no, I don't think there were any quite that short—about 15 to 18 to 25 pages. I double spaced.

I then wrote memoranda which frequently turned out to be almost half as long as the original outline.

This took me a considerable amount of time obviously,

because I was trying to be as specific as I possibly could be, not in citing my objections, but in citing specifically detailed things which I wanted them to include in the revision of the outline.

JUDGE BARBAN: If you will excuse me—Mr. Goldman, I hate to interrupt this because it is tremendously interesting, but I think we are getting a little bit away from the issues, are we not?

MR. GOLDMAN: I don't believe so, your Honor. I am trying to find out what a story editor; how he functions as a story editor.

JUDGE BARBAN: The witness is giving you evidence that you had anticipated?

MR. GOLDMAN: Yes.

JUDGE BARBAN: All right. Proceed, Mr. Furia.

THE WITNESS: Subsequent to that I found it in my practice of detail memoranda was just impossible in terms of my own time. I was working seven days a week and frequently 14 hours a day and subsequent to that, again I believe in every [1186] case, I did this same thing but I did it verbally. That is in meetings with the writers rather than taking the time to set it all down. It takes longer to write it down than it does to do it verbally.

After this the writers would bring in revised outlines; quite obviously very extensively revised outlines, and in most cases I did have them do some changes in that outline.

In many cases I myself did subsequent changes in the outlines before I submitted it to ABC.

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[1192] THE WITNESS: My reason for doing this were that first I had run out of contractual commitment from a writer; that is he had done everything he was obligated to do for the amount of money he was being paid and secondly, because as I have indicated I was quite clearly the one most familiar with the material.

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[1196] Q And what occurs when they deliver the scripts to you?

[1197] A We went through the same process of revision that I have described for outlines except that it was now included—all of the aspects of it—because it was in script form.

The details were obviously the or more in the script than they were in outline because we had all the dialogue and everything else that I have described.

My revisions therefore included not only attitudes and characterization but the expression of those attitudes; expressions of characterization and the details of the action.

In most cases I had found by this time I simply did not have the time to write anything down for the writers and we had developed a pretty good rapport by this time in any event, and these sessions were verbal. That is I would call the writer in and we would sit down. I would detail for him all of the problems that I found as well as whatever solutions I had to offer for those problems in as specific detail as I could, and then we would together attempt to find better solutions or ones which the writer preferred or which I preferred.

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[1226] Q And how many w iters did you interview resulting in the selection of those 18?

A Interview?

Q Yes.

A Perhaps 20.

Q Did you talk to any that you did not interview but eliminated from consideration?

A Yes. I thought that is what you meant by interview. I did talk to, I think, two, who I did not employ.

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[1279] CROSS EXAMINATION

Q (By Mr. Keaton): Mr. John Ford, the director that you mentioned, a writer?

A No. Excuse me. You mean in the formal sense of a writer—I would say no. I would say he writes with film.

Q But he does I take it do from what you know about him, the same kind of thing in changing the picture as you are shooting that you do?

A I don't know exactly the same. I am not sure that he actually writes anything down. He may take a scene that is written and work on it with the actors and just drop certain lines; improvise certain lines rather than actually writing something down. I am not certain.

Q But you know it can be an oral change instead of a written change?

A Yes. Very often I have oral changes after conferences that I do not have time to write them sometimes, but the actors don't really make up the lines themselves; they don't make up the situation themselves. Sometimes they do very well at it [1280] by the way.

Q An actor may be changing a line?

A Not without my permission.

Q No, but with your permission?

A Yes, of course. Sometimes it is a better line than I have written. As a matter of fact he is not the only one.

Sometimes a cameraman, a grip or a prop can also do that.

A I don't remember, were you the director in Caine Mutiny?

A No, I was not.

Q It was my understanding that in Caine Mutiny Marlon Brando rewrote a good part of the last few scenes?

A I wouldn't doubt it. Marlon is a very astute professional player but Marlon Brando was not in Caine Mutiny.

Q Mutiny on the Bounty. Excuse me.

A Yes. Well, Mutiny on the Bounty he did a lot of improvising and rewriting I would say. Yes. He usually does.

Q To your knowledge Marlon Brando is not a writer, is he?

A He is not what?

Q A writer in the professional sense?

A No, but when he directed his only film he did a lot of rewriting while he was shooting.

Now I don't know what you call writing but Marlon Brando made many changes while he was shooting the picture and I have forgotten—it was a western—I have forgotten the title of it, but it was changed and changed as he went along—the [1281] same way he does when he is acting. He is quite an unusual • • •

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[1302] MR. MILLER: Yes. The Association calls Mr. Sheldon Mittleman to the stand.

Whereupon,

SHELDON MITTLEMAN

[1303] was called as a witness by and on behalf of the Association and, after having been first duly reminded of his previous oath, was examined and testified as follows:

MR. MILLER: Will the Guild stipulate that Mr. Mittleman has previously testified and has identified himself, his background, et cetera?

MR. HACKLER: Yes.

DIRECT EXAMINATION

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[1312] Q Have you been involved in Association policy discussions concerning employment of hyphenates during the strike?

A Yes, I have. In fact I have been present at every single meeting of the negotiating committee, either the internal meeting of the committee itself or the meetings between the full negotiating committee and the negotiating committee of the Writers Guild of America.

Q Now in connection with the employment of hyphenates during the strike, was there any Association policy determined as to their employment?

[1313] A Yes.

Q And what was that policy?

MR. HACKLER: Objection. There is no foundation laid for that. The fact that he is presently in negotiations or participating is entirely too vague.

MR. MILLER: I believe I also asked him whether he was engaged in those meetings—the internal meetings—which determined Association policy and the answer was yes, he was.

JUDGE BARBAN: The objection is overruled.

Q (By Mr. Miller): What was that policy?

A The policy was discussed and finally agreed upon among the member companies of the Association, that in the event of a strike the hyphenate employees, that is the producers or associate producers or other types of executives who were members of the Writers Guild, would be instructed and directed to continue to report under their employment agreements but that they would be advised that they would not be required or expected to do any writing services under the jurisdiction of the Writers Guild Agreement.

Q Now was that policy decided upon in a meeting attended by the various representatives of the member companies?

A Yes, it was.

Q And was that policy disseminated to all members of the Association company—excuse me—to all member companies?

A Yes, in a number of steps. The policy was then given [1314] to the legal committee of the Association of Motion Picture and Television Producers, and the legal committee drafted and approved a sample, in effect, statement of policy which was sent to all the members to be eventually sent to the writers, the writer hyphenate.

The communication was made to all member companies as to this policy.

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[1319] Q (By Mr. Miller): Mr. Mittleman—I will withdraw the question—in connection with Universal City Studios what if anything—what if any action did Universal City Studios take in connection with this policy?

A Universal sent notices and advised in many cases orally, all the hyphenates, all the executives who they knew or believed to be also members of the Writers Guild.

MR. HACKLER: May I ask a question on voir dire with respect to that answer?

JUDGE BARBAN: I don't believe he has finished his statement.

THE WITNESS: No, I have not.

[1320] JUDGE BARBAN: All right.

THE WITNESS: They sent one or the other or both forms of communication to all executives whom they believed to be members of the Writers Guild. The substance of which was that in the event Writers Guild called a strike, each of these people would be expected to honor his employment agreement and to report for services in a supervisory capacity and the particular capacity was specified in that type of notice as a producer or as a director or as an executive or whatever.

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[1351] Whereupon,

ORISON S. MARDEN

was called as a witness by and on behalf of the Network and, after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

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[1352] Q In the course of those meetings have there been formulated any policy with respect to the networks position on whether or not their executives, vice presidents, producers, executive producers and story editors and other executives should be required to work during the strike if those persons are members of the Writers Guild?

A Yes.

Q Would you describe or tell us when and the content of that policy? When it was formulated and what it involves?

A This would have been toward the end of February of this year and the policy was such that the persons

whom you have described were members of the Writers Guild would not be required to do any covered writing services.

Q What do you mean by covered writing services?

A In the film agreement that is known in the trade as A through H is not covered.

Q Is it your testimony it would be considered covered services for purposes of that policy?

A I believe that is true. I am not an absolute expert on the film agreement but in general that is true.

Q My question has to do with what the policy was and not what the contract is?

A The policy was that they would not be required to write.

[1353] Q What production activities is CBS engaging in during the strike?

A At the moment a one hour television program called Gunsmoke.

Q That is the only activity?

A Yes.

Q Would you tell us how many scripts if any the Gunsmoke program had prepared prior to the commencement of the strike?

A 17.

Q And how many scripts are scheduled to be shot during this season?

A I believe it is 24.

Q To your knowledge have any hyphenates employed by CBS varied from the policy set forth—you earlier described a policy with respect to writing services during the strike?

MR. HACKLER: Objection. There is no foundation laid for this witness to be in a position by virtue of being in the labor relations department in knowing what writing services if any were being supplied by who.

JUDGE BARBAN: The question goes to whether to his knowledge.

MR. HACKLER: Then I withdraw the objection.

THE WITNESS: To my knowledge, no.

Q (By Mr. Fisher): And upon what do you base that answer; how do you get your knowledge?

[1354] A Through constant contact—not always daily—but quite constant contact with the executives of the program department.

Q Who would that be?

A Harry Lafferty; Paul King; Frank Barton; Bill Berry, who do keep me informed as to the production activities as part of my background in dealing with negotiations and the strike.

• • • •

[1359] REDIRECT EXAMINATION

Q (By Mr. Fisher): Mr. Marden, you stated I believe, that the scripts were to your knowledge, in final condition and that certainly no writing services were done by any of the hyphenates on the program?

A Yes.

MR. HACKLER: I don't think that is a fair statement, he said to his knowledge none was done.

JUDGE BARBAN: Lets assume the Witness' testimony is that to his knowledge that was done.

Q (By Mr. Fisher): Upon what do you base that knowledge? Anything more specific?

A I would say two things. Again in my continuing contact with the program executives and also the statement by Mr. Mantley that appeared in print that while they were on location shooting in Arizona, he ran way over budget on that particular episode because he felt that he shot the script as it actually was and therefore shot more material than he needed because he was not going to do any writing or rewriting.

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EXCERPTS FROM GENERAL COUNSEL'S EXHIBIT 16 A-O

[4] MR. LAVERY: The hearing in the matter of Guild versus Cy Chermak.

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[60] MR. LAVERY: Okay.

MR. MENDONSA: I have no objection if you speak slowly.

CY CHERMAK

called as a witness on behalf of the Respondent, testified as follows:

• • • •

[62] The private facts are far more ugly. My wife, my child and I have been subjected to an almost unspeakable campaign of vilification and harassment. For example, I found myself exposed to the horrifying experience of having a member of the Council of the Guild —Brad Radnitz, by name—threaten my wife by telling her that my going to work would end my career and that the Guild would not permit writers to work for me in the future. I, myself, received intimidating calls from officers of the Guild. The end result was that both my wife and I ended up under doctor's care and I was finally hospitalized.

• • • •

[80] Q When you went in on the 13th of April, 1973, to Universal, you stated that the company did not consider you working. Did you yourself consider yourself working?

A No.

Q You went in for the purpose of, one, to eat lunch and to make phone calls. Were those official business calls?

A No.

Q These were all personal calls?

A Yes, sir.

Q May I ask what was the purpose, then, of going to Universal Studios?

[81] A It was an act of defiance.

• • • •

[85] MR. MAIZLISH: I'm going to interrupt you, if I may.

Mr. Chermak has, during the course of the recess, crossed out a number of things in his statement, comments regarding his actions from April 16 on and the reason why he did that was because it is very clear that this hearing is limited to his actions of April 13th, 1973.

It did not go beyond that. If the Guild desires to initiate anything else, we're certainly prepared to respond to it. Mr. Chermak is prepared to state what he did, why he did it and do so with a clear conscience. I simply say to you that he did not perform any writing services nor had anybody do any writing for him. He served in executive position and in that position he is twice removed, story editor and editor. The charge here before us is a charge that relates to April 13, 1973, and I think we [86] ought to direct our attention to that.

• • • •

[4] MR. LAVERY: May the hearing come to order. This is a disciplinary hearing in the matter of the Writers Guild of America, West, Inc., versus Robert A. Cinader. The matter is being heard before a trial committee duly convened pursuant to Article X by the By-Laws of the American Guild, West, Inc.

• • • •

[21] MR. LAVERY: Next witness.

S. S. SCHWEITZER,

called as a witness on behalf of the Guild, testified as follows:

EXAMINATION

BY MR. ORMAN:

Q Mr. Schweitzer, will you state and spell your full name, please.

A S. S. Schweitzer, S-c-h-w-e-i-t-z-e-r.

Q And you are a member of the Guild?

A I am.

Q How long have you been a member of the Writers Guild?

A Twelve years.

Q Did you have any duties during this recent strike?

A I did.

Q Will you tell us what those duties were?

A General investigatory duties of violation of strike rules.

Q Did you have any particular location while you appeared on those investigations?

A We were in the rear of the strike headquarters that is behind the Guild on Almont, I think it is.

Q Directing your attention to June 14, 1973, can you tell us whether or not you ever spoke to Mr. Cinader? [22] A I spoke to Mr. Cinader on Wednesday, June 13 at 3:20 P.M.

Q Was this in person or by telephone?

A By telephone.

Q Did you call him or did he call you?

A Well, I put in a call to his office, I think, some time around noon and left a number there and my name and he returned my call to the strike headquarters.

Q He called you directly?

A I think it was the secretary who got me on the line.

Q And did she say hold on, Mr. Cinader wants to speak to you?

A (Not audible response.)

Q When he got to the phone, did he say this is Bob Cinader or did Mr. Cinader identify himself as being Bob Cinader?

A Yes, he identified himself and I recognized his voice which I had heard before. I explained that I had been asked to call him because—I think there had been something in the Trades.

He talked freely about his own ambivalence about the past 14 weeks of picketing. He told about an incident in the prior week. I think when we were picketing at 20th and he was airing his feelings and another picket told him that if he felt that way, that he had no business being on the picket line. I think we talked about current negotiations. He told of a bet he made with Sy Gomberg as to when the strike [23] would end. He talked about the fact that loose lawyers would be at his trial and he felt that if the Guild had any class, they would give office space.

I told him that they were getting lunch and in those days, I think we had about eight lawyers. He said that they ought to put their names up on the door anyway

which he ended. He also mentioned the letter sent to management in which he said that he would not write while working at Universal and he said that he hoped that the strike would end because he was unhappy with the calibre of the scripts that he was getting and he ended that by saying that Mike Franklin would upstage the PGA which was due to have its annual meeting the following Monday by calling our memberships to ratify settlement and we signed off.

• • • •

[42] ROBERT A. CINADER,

called as a witness in his own behalf, testified as follows:

EXAMINATION

BY MR. SUSMAN:

• • • •

[45] • • • The studio made several efforts to induce me to go back to work in a combination of threats and promises, mostly coming from the package, rather than from the studio administration. My position was that I wasn't in a position where I could do it because of the story-editor function. The week that I went back to work, I was told that if I would function as executive producer, they would tear up the old contract which would eliminate any story-editor function from my old obligation to the studio. I told them that that partially solved my problem in terms of my own understanding of the jurisdiction, but I couldn't be sure that they were doing it in good faith because at that time among the hyphenates, there was a great deal of confusion about how sincere the studios were by not requiring you to write.

One of the hyphenates—I won't mention his name—told me that he wasn't going to write. They didn't want him to go back. I don't know if that was true or not, that is strictly to demonstrate a climax. So I said if they were willing to destroy my old deal with them and to wipe it out completely and to take the position of an

executive producer, that I would have no running obligations at all, if they would execute an agreement which I drafted myself in part, absolutely stipulating to this, then I would consider [46] that I was not in a position of conflict.

So I drafted an agreement which I cleared with my attorney then he read it to their attorneys, and I said that I won't come into the studios until that is executed and deposited with my lawyer. I do not have any copies here for you.

Q There is no need for it.

A Anyway, this agreement specifically sets forth that under no circumstances could they require me or permit me to do any writing and that they could not consider me to be in breech of contract by my failure to do any writing as long as the conditions of the strike lasted. They indicated that they would be totally willing to sign it. It was signed jointly by the studios and Mark VII, Limited and at that point I told them that I would return and I did which I went back in on the 7th of June which is 12 working days before the end of the strike.

Q Well, am I correct that you did not perform any writing services during the period of June 7 until the end of this strike?

A I did not.

Q Now, when you came back to work and during the entire period, during the working days from June 7 and to June 24, at any time going to or coming back from the studios did you ever cross the picket line?

A I did not. Well, I would like to point out that—

Q There has been some testimony that during the period of the strike that you served a hundred hours or so [47] on picket duty—

A Yes.

Q And I understand that you would like to correct one statement made by Mr. Wilber—

A Yes.

Q —that is having to do with picketing duties during the month of June, 1973?

A Yes. Carey's recollection was incorrect. There was one period between the end of the weekly or daily picket-

ing when they started demonstration of mass picketing at which there was a demonstration procedure at Fox which involved about a hundred pickets and I served on that picket line which is where I got into a conversation where Schweitzer was referring to. I was then called subsequent to picket following the end of the strike and I told them that notwithstanding the fact that I was returning to work—of course, that picket line was obsolete because of the fact the strike was settled Sunday night, June 24. I forget what day, but he said it was a Wednesday. I have a recollection that we were supposed to picket Monday morning, but in any event, it was scheduled after the 24th and that was eliminated automatically.

Q When you came back to work on June 7, was it as an executive producer of the Emergency and Adam 12—Emergency and Chase?

A Yes.

Q And as the executive producer of the show, you served in an executive and supervisory capacity?

[48] A Yes.

Q Did you hire people?

A Yes.

Q Did you have the authority to discharge people?

A Yes.

Q Did you have the authority to assign them to their duties on the show?

A Yes.

Q In other words, is it correct to say that you served as an executive under the management of the studios and of the Jack Webb Company; is that correct?

A That is correct.

• • • •

[51] Q BY MR. ORMAN: Is it your testimony that you saw the scripts that were written during the course of the strike?

A Yes. I read all of the scripts that were written during the course of the strike.

Q On both Emergency and Chase?

A Yes.

Q For what purpose were you reading those scripts for?

A I was reading those scripts for the purpose of the determining whether or not there was any value in the material. When I say reading the scripts, I should amend that to reading the scripts that were written during the strike as well as written before the strike, because in the case of Emergency, there were four scripts that were written Guild members who were turned in before the strike, and I think three or four scripts that were written on Chase before the start of the strike.

For the record, the scripts that were written before the strike were filed with the Guild as of the strike date, if I may add, to protect the writers who wrote those scripts.

So I had between the two scripts eight scripts—I suppose that you would say—legitimate and then maybe, [52] I don't know, seven, eight or nine more that had been scrounged from some place during the course of the strike.

Q Is that six or seven or eight for both Emergency and Chase or six, seven, or eight for each one?

A It is hard for me to say because that material is in a very disorganized form. In some cases, there were—

Q I was asking you, I want to know the number of scripts that you received and read on each series during the course of the strike?

A I would say maybe including the outlines or very brief story ideas, maybe about five or six on each one. I don't have any real recollection of it specifically because most of the material was so obviously useless that I just kind of read it and threw it in the out basket.

Q Then is it your testimony that the purpose of the reading of the scripts were to see whether they were useable or not?

A Yes.

Q Would it also be correct to see whether or not there would have to be changes to be made in the scripts?

A Yes, obviously, the useability would depend on work done because none of the material passed the advance first stage and you very rarely get a first shoot that is shootable.

Q Is it fair to say that you would make a mental or perhaps written notation that perhaps this scene would have to be changed?

A Well, let me put it this way. With respect to [53] the Chase material, I determined that none of the material was of any use at all including the pre-strike scripts. In the case of the Emergency material, I determined that two of the first draft scripts were shootable with no really creative work being done on them and I did not progress my thinking as to what would need to be done past that particular point.

I read the material and I said that these two scripts which were both written by the Guild members, you can go ahead and set them up for production because they are shootable.

Q Who did you say this to?

A To the unit manager who schedules the physical production of the show.

Q Did you discuss these two useable scripts with the director?

A Yes, I discussed one with the director because the normal working procedure is, as you gentlemen know, when you prep a show, you don't usually do it no more than a week or so before it shoots. So the only one that was being prepped, the first script of Emergency was being shot. None of the other material was shootable. There was discussions with the director on the prepping of the first Emergency scripts which I said had been written before the strike.

Q All right. Can you tell us the discussion in terms of hiring the actors, in terms how you are going to shoot it, in terms of what?

A Mostly it was a question of how it was going to [54] be shot because Emergency involves a great deal of physical rescue work because of the incidents written by the writer. And then you have to go and find some place for a guy to fall off a cliff and the normal part of my function is to go out with the director and discuss with him the feasibility of physically staging what the writing has indicated that he wants to do.

Q And would it be fair to say that at least whether or not to some of these things you determined whether or not they were physically or financially feasible to shoot the scene as written and therefore they would have to be either dropped or shot in a different way or changed in some manner?

A I do not know if that's a question that can be answered explicitly because the point is that you usually, when you are doing in this particular show, I am not generalizing now a rescue, but the dialogue which is possibly the blood pressure is 180 over 20 will kill you no matter what the guy fell off of.

So this mostly consisted of going up the mountain with the director and saying that he fell off of the cliff over here and the director said that I can't get the camera down in there, and then I say let's go think of some place else. There isn't too much of creative writing in this show of Emergency except when you get into attitudes with the winning character and when they are doing their acts, it can be technical and there is a great deal of work done on the dialogue, mostly by doctors, because if they said he had [55] no symptoms, then he would have been dead for six years.

Q You discussed, I think, the first show for Emergency quite thoroughly.

A Yes.

Q I think you said it was the second script that you felt was useable?

A Yes.

Q Did you have any discussions with this second script with anyone?

A No, because the first show on Emergency was scheduled for principle photography on the 26th of June which was two days after the strike was over and the way we work is that we never start planning the second show until the first show is launched. So I would not have gotten into any discussions with the director because under that contract, they don't report that far in advance. Anyway, until Wednesday the 27th of June after having launched the first one, I then sat down with the director and said listen guy let's screw up the second one, but the second script was written pre-strike.

Q Was there anybody functioning as a story-editor in reference to those two scripts during this period?

A Well, in the manner of speaking, I suppose you might say that somebody was because there are a great many people involved. For example, to illustrate, I have a script secretary who is full time to do nothing but coordinate with the Harbor General Hospital and the Fire Department on Emergency to find out what technical provisions have to be [56] made and that writing is done almost automatically by her because if she goes to the hospital and the doctor says change the symptoms, the symptoms are of no interest to us for the dramatic purpose. That script was revised according to my record six times between the time it was initially published and the time that it was finished.

Q As your script secretary, you say, take care of these technical matters, does she discuss those proposed changes with you before she incorporates these changes?

A Yes, she says—if the doctor says change the symptoms, what do you want from me. I don't know whether they are right or not.

Q And she tells you what the doctor says?

A Yes. He will say you have a guy, give him an intravenous injection of D5W—which I don't know what it is—and she will make it Wringer's Lactate and I will say wonderful; I don't care.

Q Now, in regard to this other series in Chase, how many scripts you say that you had on Chase?

A I think—with scripts and outlines—

Q Scripts and outlines?

A I say maybe there was about eight pieces of material. All of which I suggested that they abandon rather thoroughly.

• • • •

[76] MR. GOMBERG: What I am trying to get clear —I don't want to get involved in semantics, all of us have sold stories standing on our feet or sold concepts standing on our feet because we can do that. We are writers. We don't have to sit down when the script agent comes out with a structure of [77] a script. We can fix a script by standing up and saying that this

scene needs eliminating and this scene needs to be changed as to his character, and then we can make the people see as opposed—

THE WITNESS: You do that when you cut pictures too.

MR. GOMBERG: That is what I was just wondering because it seems to me that a structure or restructuring don't—I don't think that could be done without creative input.

THE WITNESS: Well, I disagree with you in this respect. I didn't do the restructuring as much as the site that the present structuring is not viable. It is going to have to be restructured to work right. Now, with the backlog of material that they had, they could have gone into production a month earlier than we did if they had gone with the concept that those earlier scripts were written. So rather than hencing the date that they wanted to present the show, I was inhibiting it because their argument to me was grant it if you like, it doesn't solve the problem. How in the hell do we get the thing made. I said that is not my problem. That is your problem. My problem is to tell you that it is not right the way it is and if you want to do it, it has to be done another way.

MR. GOMBERG: And you told them the way that it should be done?

THE WITNESS: It is what I am doing.

MR. GOMBERG: No, you said that they agreed to it.

THE WITNESS: Yes, but you say to somebody, for example, talking again about—let's say a bowl of eggs and encountered [78] in front of the enemy, you look at a piece of material and you say that it needs more depth of characterization, I don't think that gives them a lot of insight, especially at Universal.

You say to them that the start of the show should be a guy instead of a helicopter, that is not really saying that I have solved your problem. That is merely telling them that that is the way that you are going to solve your problem when you get around to doing it.

• • • •

[12] MR. MENDONSA: We will call as our first witness Don Sanford.

DONALD S. SANFORD,

called as a witness, was examined and testified as follows:

EXAMINATION

• • • •

[13] Q Now, directing your attention to March 17 of 1973, did you have occasion to have a telephone conversation with a member by the name of Jerome Bredouw?

A Yes.

Q And did you call Mr. Bredouw, or did he call you?

A He phoned strike headquarters.

Q Did he identify himself?

A Yes, he did. I just happened to get the call. It came in on the extension I was working on.

Q But he did identify himself to you as Jerome Bredouw?

A Yes.

MR. POE: When was this, Mr. Mendonsa?

MR. MENDONSA: This was March 16.

Q Now, will you tell us what you said to Mr. Bredouw and what Mr. Bredouw said to you in that telephone conversation?

A Mr. Bredouw called in to inquire about his status. He apparently received a notification from the Guild, the notification that all the members got about their obligation to check with strike services headquarters [14] committee about picket duty. He called in to inquire about his status, and he told me that he was employed by Universal in, I believe it was, their publicity department and was a contract employee and also a member of the Guild. If I recall correctly, he said he was a member of the Writers Guild East but he was a member of the Writers Guild, stated that he had only written a couple of scripts and that he had a dilemma insamuch as he had a contract with Universal and that

was how he made his living. And he inquired about what our rules were about crossing the picket lines in view of his status. And I told him about what I knew. My instructions were that—were that if he, being a member of the Writers Guild, prohibited him by our strike rules from crossing our picket lines. And I warned him about the danger of that. And he responded that he had this dilemma. This is how he made his living, and he couldn't very well quit his job and honor our strike rules. So we left it at that. I told him I would write a report on it, and I would see what happens. I would say as a person the conversation was very friendly. We both recognized each side had a problem. He did volunteer, by the way, anywhere we wished him to picket except at Universal. He thought that might be a little embarrassing to him.

Q Did he state to you that he was working at the present time, at the time he was making the call?

A Yes.

• • • •

[4] MR. KNOPF: We are in session. The hearing will come to order. This is a disciplinary hearing in the matter of Writers Guild of America, West, Inc., versus Jon Epstein. This matter is being heard before a trial committee duly convened pursuant to Article 10 of the Constitution and By-Laws of Writers Guild of America, West, Inc. The members of the trial committee are James Poe, Nate Monaster, Michael Blankfort, Emmet Lavery, and Christopher Knopf, Chairman.

• • • •

[16] MR. MENDONSA: Call our first witness, S. S. Schweitzer.

SAMUEL STEVEN SCHWEITZER,

called as a witness, was examined and testified as follows:

EXAMINATION

BY MR. MENDONSA:

• • • •

[17] Q Directing your attention to April 11, 1973, did you at that time on that date have a conversation with a member by the name of Jon Epstein?

A Yes, I did.

Q And did you call Mr. Epstein, or did he call you?

A I called him at his office at Universal.

Q And when you called his office at Universal, did he answer the phone?

A Well, his secretary answered, and I identified myself, and I was put through to him.

Q And when he got on the phone, did he identify himself as Jon Epstein?

A Yes, he did.

[18] Q And will you tell us what you said to Mr. Epstein and what he said to you in that telephone conversation?

A Well, I was calling because of a story in the trade papers about Mr. Epstein and, I think, two or three other writer-producers who had stated they were going back in to work at Universal. And he told me that was true. And he told me he felt he had no choice but to go in. He said he felt that he—that he supported the writers strike. He made some reference to the fact that he did not think that he didn't—he hadn't made much money as a writer, and he told me that he thought we could win the strike if every producer went in—And he said also he wasn't going to do any writing or talk to writers—and he said we would win the strike if all the producers who were members of the Writers Guild went in and sat in their offices and did nothing and collected money.

Q Do you recall anything else having been said in that conversation?

A They were just personal matters. I asked after the health of his brother, whom I had known for some 40 years. And I think that's about all I can remember.

Q Did you advise him that he was in fact in violation of the strike rule?

A Well, I advised him—I identified my function, the reason for my call when I first spoke to him. I told him we were looking into this. And I did remind him that

he was in violation of the strike rules by going in. And it [19] was at that time that he said that he had no choice.

Q Did you advise him then that he would be subject to disciplinary action?

A I advised him that I would be passing this report along to the disciplinary committee.

MR. MENDONSA: I have no further question.

MR. KNOPF: Mr. Holtzman?

MR. HOLTZMAN: Yes, sir.

BY MR. HOLTZMAN:

Q Mr. Schweitzer, when you told Mr. Epstein that, in substance, you were calling as a representative of the investigating committee with respect to disciplinary matters and told him about the strike rules, what did you tell him about the rules?

• • • •

[21] Q BY MR. HOLTZMAN: Mr. Schweitzer, referring again to this telephone conversation—

A Yes.

Q —was it Mr. Epstein's statement to you in substance that he felt he had no choice but to go in and work as a producer?

A Yes.

Q And he stated further that he did not plan to do any writing at work; is that correct?

A That is correct.

Q Or even to talk to writers?

A That is what he told me, yes.

• • • •

[40] ARNOLD SHANE,

called as a witness, was examined and testified as follows:

• • • •

[42] Q Now, in Mr. Epstein's capacity as producer, does he have the authority in the interest of his employer

to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline the people working on the shows?

A Yes, he does.

Q Does he also have the responsibility to direct them or to adjust their grievances or effectively recommend such action?

A Yes.

Q And in so doing, does he use his independent judgment? He simply doesn't carry out the order of other [43] people, but makes his determination on his own; is that correct?

A Yes, that is true.

Q There are instances where he will talk to other people before he does something, but, nonetheless, he can go ahead and do it himself insofar as at least certain of the functions of the show are concerned, isn't that so?

A Yes, that's correct.

Q Does he supervise the activities of the cast?

A Yes.

Q And the writers?

A Yes.

Q Does he hire writers?

A Yes, he does.

Q Does he hire directors with or without director-producer approval?

A Yes.

Q Among his activities, does he also act as a liaison with the television networks?

A Yes, he does.

Q During the period that Mr. Epstein has been employed at Universal, has he done any writing?

A No, he has not.

• • • •

[44] Q Are you familiar with Mr. Epstein's personal service contract at Universal?

A Yes, I negotiated it myself.

Q You negotiated with Mr. Epstein?

A With his agent.

Q And does it give a right to Universal Studios to call upon Mr. Epstein to perform writing services?

A Yes, it does.

• • • •

[61] MR. KNOPF: You are saying it was all done before the strike? All of the scripts you have on "Owen Marshall," any network changes incorporated were done before the strike; is that correct?

MR. MONASTER: I think—

MR. HOLTZMAN: I think we are entitled—

MR. MONASTER: I think—

MR. HOLTZMAN: I think we are entitled—

THE WITNESS: Could I answer?

MR. KNOPF: Please.

THE WITNESS: I believe all the changes were done before the strike.

MR. KNOPF: All changes?

THE WITNESS: To my knowledge, yes.

• • • •

[62] MR. MONASTER: Forgetting about how many scripts on April 14 or May 5 or whether there is any variance, lesser or more, would you say that Mr. Epstein's presence at the studio in the period since March 5 has advanced one script one minute closer to production either by casting or cutting?

THE WITNESS: Yes.

MR. MONASTER: Then he has made a contribution to that script?

THE WITNESS: That—I don't think—Well, the question I don't think follows my last answer to the prior question.

MR. MONASTER: It follows beautifully.

THE WITNESS: Let me ask for a clarification.

MR. MONASTER: All right.

THE WITNESS: Is the casting of a guest star in a role a contribution to a script?

[63] MR. MONASTER: Anything you do for that script which means that the script will be that much closer to production when the strike is over is a contribution.

THE WITNESS: Then I have to answer yes.

• • • •

[3] MR. KNOPF: The hearing will come to order. This is a preliminary hearing in the matter of the Writers Guild of America, West, Incorporated versus John Michael Crichton. This matter is being heard before a trial committee duly convened pursuant to Article X of the Constitution and By-Laws of the Writers Guild of America, West, Incorporated. The members of the trial committee are James Poe, Nate Monaster, Michael Blankford, Emmet Lavery, and myself, Christopher Knopf, Chairman.

• • • •

[43] MR. MENDONSA: We will call as our next witness Harlan Ellison.

HARLAN ELLISON,

not having been first duly sworn, testified as follows:

EXAMINATION

BY MR. MENDONSA:

• • • •

[45] Q Will you tell us what you said to Crichton and what he said to you in that telephone conversation.

A I said that I was surprised to find out that he had crossed the line and that I was hoping he would come out quickly, that he had been observed going in, that Billy Woodfield had seen him, and a number of other people, and that I was upset, because Michael is a friend, and I did not want him to get in trouble with the Guild, and he told me that— [46] he gave me a number of reasons why he had crossed and why he was intending to stay and work on the picture. I can go into those if—

Q Yes, please tell us what he said.

A Well, the first reason was that he had been waiting a great many years to do this picture, and his words were, "I simply can't turn it down."

And the second reason was that he felt that he was not in contravention of Guild regs, regulations, because he was not writing and functioning in his capacity as a

director solely, and he made a specific point of mentioning that Metro-Goldwyn-Mayer's executives had promised to indemnify him against any action by the Writers Guild.

• • • •

[LINDSLEY PARSON, JR.—EXAMINATION]

[75] Q Are you familiar with Mr. Crichton's personal service contract with M-G-M?

A I am familiar with the fact that he had two, we prepared two contracts. I saw a deal memo where we prepared one as a writer and a subsequent one as a director.

Q And do you know if those contracts have a provision in them that would require Mr. Crichton to perform writing services when requested?

A The director's contract did not contain any such provision.

Q Was there another contract other than the director's contract?

A There was a writer's contract, as I mentioned, which called for the writing of the final screenplay, which we received prior to commencement of physical photography.

Q He wrote the screenplay under the employment of M-G-M?

A Yes, he did.

Q You say, though, his director's contract does not [76] call for him to do any writing whatsoever?

A It doesn't call for him to do any writing. A director, I think any director within the industry occasionally will change a line—this is historical—he will change a word if an actor has a problem stating a certain word or from a pronunciation standpoint. We did not call upon him, to my knowledge we didn't call upon him to do anything of that nature in this director's contract, but that's within the purview of a director.

• • • •

[85] MR. MENDONSA: I assume that that clause only prevents the Diretcors Guild from calling a strike or sanctioning a strike during the term of its contract with M-G-M; is that correct?

MR. HAUGHTON: No, it goes further than that. It provides that the Directors Guild has got to actively cooperate with the producer in insuring that its members do report for work unless the Directors Guild itself is on strike.

MR. POE: What is the expiration of that contract?

MR. HAUGHTON: There was a reopening on May 1st of—

MR. MENDONSA: It expired 31 April.

MR. HAUGHTON: No, it was a contract for three years, but the Guild had the right to reopen it on May 1st, 1973, which has been done, and we're currently setting ourselves up for collective bargaining starting next Tuesday, as I understand it now.

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[4] MR. SEATON: Come to order, please.

This is a disciplinary hearing in the matter of the Writers Guild of America, West, Incorporated, versus Hugh Benson, B-e-n-s-o-n.

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[30] MR. ORMAN: My first witness is Mr. Schweitzer.

S. S. SCHWEITZER

called as a witness on behalf of the Writers Guild, testified as follows:

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[31] Q Referring back to April 4th of this year, did you have an occasion to call the respondent, Mr. Hugh Benson?

A I did.

Q At the time that you called him, did you know him personally?

A Yes.

Q Could you tell us how you knew him?

A We toiled in the same vineyard.

Q Do you want to be a little more specific than that?

A We worked together at Cinema Center.

Q Did you recognize his voice at that time? Do you think you were able to recognize his voice over the telephone?

A Yes.

Q Did you call Mr. Benson on April 4th of this year?

[32] A Yes, I did.

Q And what time did you call him?

A About shortly after lunch, about 2:15.

Q Where—at what studio was he when you called him?

A At MGM.

Q Could you tell us why you called him? What was the occasion of your calling?

A We seen something in the trades that he was producing a 90-minute movie of the week for ABC at Metro, and so we called to check, to make sure, he wasn't crossing our picket lines.

Q When you say "we," was there anybody else listening in on the call?

A When I say "we," I am speaking on behalf of the Investigating Committee and there were other people in the room. Mr. Taylor was right next to me when I called him.

Q All right. When you called Mr. Benson on April 4, what did you say to him and what did he say to you to the best of your recollection?

A I greeted him and he greeted me, I think, he knew my voice as well as I knew his and I pointed out to him that we didn't think he should be crossing our picket line and rendering services to the studio.

He informed me that he was honoring the contract as a producer and did not—and was not going to do any writing.

I tried to present our position, and he repeated again that he was only honoring his contract as a producer and did not intend to do any writing. I asked him to check it out with Mike Franklin or one of the other lawyers here at the [33] Guild and then I wished him luck and that was all.

Q When you asked him to check it out with Mike Franklin, what was his response, if anything?

A I think he repeated that he was honoring his contract as a producer and didn't intend to do any writing.

Q Did he refuse—did he tell you that he was not going to check it out with Mike Franklin or anybody else at the Guild?

A Yes, I think so.

Q Could you tell us what was—did he tell you what specific series he was working on at that time?

A It was something called Shirts and Skin which was a 90-minute movie of the week for the American Broadcasting Company.

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[56] HUGH BENSON

called as a witness on behalf of the Respondent, testified as follows:

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Q What is your own evaluation of your ability to write, write a story or something normally a writer writes?

A As it is obvious, I am self-taught. Everything that I have learned, I have taught myself by observing others. I have never had faculties to take down a thought and put it down [57] on paper. Even writing letters are difficult for me. I have secretaries helping me to write letters because of this ineptness for using words. I can say the words, but I can't put them down on paper.

Q Now, on the basis of what work did you apply for membership in the Writers Guild; do you recall?

A Yes, on the basis of some five or six stories for Maverick, Surfside 6, and so forth. Notions that I have had when I was working for Bill Orr as an executive assistant, it was suggested that we get down on paper in collaboration with another person who was a member of the Guild, I gave him the notions, and they wrote the notions up and submitted it to the Guild.

Q Would you describe—could you give us an example for one of these notions, how you did it?

A Yes. In sitting and trying to get stories was very difficult for us at that time. We were noted for paying

little money for writing at Warner Brothers, and we had a limited amount of writers working for us and some were not very good.

We would think up our own stories and in sitting around a table in somebody's office, either mine or Jim Barnett's or Dick Bluel, we would think of stories. And some five or six that I thought up, notions that I thought up, I would tell Jim Barnett who was our story editor. Bill Orr would do the same, and he would go down and put it on paper, and we would submit it to a writer and that would be the story.

Q And you received story credits for that?

A Yes, I received story credits.

[58] Q With someone else?

A With someone else.

Q Did you yourself ever put pencil and paper in connection with any of these at any time?

A At no time.

* * * *

[60] Q Would you please describe in your own words what your functions as a producer on Shirts and Skin was?

A On first part of March or the last part of January, I was handling a 92-page script called Shirts and Skin written by Bruce Paltrow. I was asked to read it and after I did, I enjoyed it and after which I was asked if I would like to produce it. I said I would. I was told that I would have to [61] produce it in with the author himself as this is his first effort as a writer, and they didn't want to pay him the going rate, and they figured this was the way to give him more money. So they made him a co-producer and they asked if I would accept that, and I said I would.

And my function as the producer, I asked the script to be cut because it was too long. With the approval of the network, I hired the director, hired the cast, formed the crew, found the locations, cut the film, worked with Jerry Feelings who starred the film, picked the costumes. The normal functions of a producer is to be part of all of the departments, supervise all departments that make the film.

* * * *

[62] BY MR. MILLER: Mr. Benson, on or about what phase of the production of Shirts and Skin was on about April 4th, 1973?

A We were shooting it then.

Q Did you report to work at MGM on April 4, 1973?

A Yes, I did.

Q What time did you report to work; do you recall?

A At 8:00 o'clock.

Q Do you recall what you did during that particular date? What your normal functions would have been during a shooting day if you do recall that particular day?

A My normal functions of any film that I produced is to be on set from the first shot till the last except when I am [63] called away for other duties in my office.

Q For what purpose are you on the set?

A To supervise the director and make sure that what we discussed is going on film, to discuss with the director if there is a shot or shots not to my liking and have a discussion and see that either I lose or he loses. In most cases, I lose.

Q Are you also there in case problems or grievances arise which requires settlement?

A I am either there or I am called down.

Q In that event, are you responsible for the settling of these problems, adjusting these grievances?

A That is the producer's function.

Q Was that your function?

A Yes.

Q Among your functions?

A You are right.

Q Now, at some time during April, 1973, perhaps on the 4th, do you recall receiving a telephone call from Mr. Schweitzer?

A Yes, I did.

Q Do you recall what he said to you and what you said to him?

A Not verbatim, but in essence.

Q Would you repeat for the Committee, please, to the best of your recollection what he said to you and what you said to him?

A As I answer all telephone calls, I try to answer all phone calls without a secretary annoucing. I picked up the phone. Patty identified himself and we had a long greeting. [64] He asked me what I was doing at MGM. I told him that I was producing a film called Shirts and Skin for ABC.

He said, "Don't you know that we are on strike?"

I said, "I do know that we are on strike, but I am performing a function that was contracted for as a producer and, therefore, I have to do it, Patty."

I then went into some personal history of why I had to do it, which I will not bring to the Committee's attention.

He said, "Okay."

And I said, "Thanks for calling, Patty," and that was it.

I listened to Patty say that you ought to get in touch with Mike Franklin. I do not remember him saying that at all.

Q You mean you listened to him testify here, but you don't recall this was a part of the conversation?

A No, I don't recall.

Q Did you ever attempt to conceal the fact that you were reporting for work at MGM?

A Absolutely not. I went through the front gate in the morning and at night.

Q In connection with Shirts and Skin, did you perform any writing services?

A I did not.

Q What is your present position with MGM?

A I am executive producer on all on-the-air programming.

Q And what are your responsibilities now?

A I am an etxension, as he puts it, of Harris Kattleman, [65] who was head of the department. I am his extension on the stages, in the field, and so forth, to supervise the making of these films. We had four series that we are making this year.

Q Now, did you do any writing on or about April 4, 1973?

A I never wrote on Shirts and Skin, no.

Q Now, in connection with the entire production, you performed no writing?

A Absolutely not.

• • • •

[69] BY MR. ORMAN: You said after and the shooting started about April 1st.

A That is correct.

Q Were any changes made in this shooting script during the course of the shooting?

A Just the normal line or word changes that a director would insist upon or I would insist upon.

Q Well, were you ever called—did you ever suggest any changes made in the—

Did you make any changes in the shooting script?

A A word or line, yes.

Q Did you make this suggestion after March 5th?

A Yes.

Q After March 6, 1973?

A Yes.

Q Do you happen to know if you made a suggestion on April 4th of 1973?

A I could not recollect if I made any.

[70] Q When you say only a word, give us an example of any changes that you suggested on this picture after March 6th, 1973?

A Yes, changing streets of New York to streets in Los Angeles.

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[4] MR. LAVERY: Let's open formally.

This is a disciplinary hearing in the matter of the Writers Guild of America, West, Inc. vs. David Levinson.

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[52] ARNOLD SHANE,

called as a witness on behalf of the Repondent, testified as follows:

EXAMINATION

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Q Turning to Mr. Levinson, has he been a producer [53] at Universal for approximately seven years prior to April, 1973?

A Yes.

• • • •

[54] Q Did he report immediately following March 16, 1973, to the studio?

A No, he did not.

Q What happened in that regard?

A He stayed out because of the strike for approximately four weeks.

Q Prior to his return to the studio, was his [55] employment function changed?

A Yes, it was. It was decided that instead of Mr. Levinson functioning as a producer, he would move into an executive area and would be in charge of the development of new programming for the CBS network for the company.

Q Was that a promotion to a managerial level above that he had previously held?

A Yes.

Q That began on or about April 16, 1973?

A That's correct.

Q With respect to his involvement as the liaison between the company and CBS, what was the nature of his duties?

A Well, during the strike it was just a matter of discussing with the CBS executives the status of some projects that had already been in work prior to the strike and having general suggestions as to what the project should be. Since the strike, of coure, it's been a matter of contacting writers and hiring them to develop the script.

Q Did Mr. Levinson perform any writing functions whatsoever during the writing strike?

A No, he didn't perform any writing services during the strike.

• • • •

[3] CHAIRMAN ORINGER: That fine. I just want to enter some material into the record.

The hearing will come to order.

This is the disciplinary hearing in the matter of the Writers Guild of America, West, Inc. versus William Roberts. This matter is being heard before a trial committee duly convened pursuant to Article 10 of the Constitution and Bylaws of the Writers Guild of America, West, Inc.

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[45] EDMUND H. NORTH,

testified as follows:

DIRECT EXAMINATION

BY MR. ORMIN:

Q Mr. North, will you give and spell your name, please.

A My name is Edmund H. North, E-d-m-u-n-d N-o-r-t-h.

Q And are you a member of the Writers Guild?

A Yes, I am.

Q How long have you been a member?

A I have been a member since 1934 or '35. I hope that information is privileged.

MR. ROBERTS: I feel the same way.

MR. DERN: It's on the record now. You guys are in trouble.

MR. ORMIN: Q Mr. North, did you have occasion to speak to Mr. Roberts on April 4th, 1973?

A Yes, I did.

Q Can you tell us how it came about that you spoke to him?

A I was acting at that time as so-called strike coordinator working in Alan Griffiths' office, and there was a memorandum that came through addressed, I believe, to Alan Griffiths.

[46] Q For the record, Alan Griffiths is Assistant Executive Director?

A Yes, he is.

I was delegated to look into this, and I called Bill Roberts at Fox, couldn't find him there, called him at home.

Q Did you call him at home the same day, April 4th, 1973?

A Yes.

Q And you spoke to Mr. Roberts?

A I spoke to him, yes.

Q Can you tell us what he said and what you said?

A Well, as I recall, I started the conversation by asking Bill if it were true that he had crossed the picket line at Fox and he said that it was true. He said that he was involved as a producer in post-production activities on a film at Fox which he had—for which he had written the script. He volunteered the information that he felt that his services in his capacity as producer were very important at the time, very important to him as well as to the picture.

And I was genuinely shocked at his free admission that he had been crossing the picket line and his further statement that he intended to continue to do so. I pointed out to Bill what the possible penalties might be of this kind of action.

He told me that he had considered this very [47] seriously and come to the rationale and unemotional decision that this is what he proposed to do. That he had been doing it and he was going to continue to do it during post-production period on his picture.

Q With reference to his statement about post-production work, did he give you some details about what he was doing?

A He said the words "certain dubbing sessions, scoring sessions." I gathered the normal post-production activities of a major motion picture.

He specified, by the way, that he had done and as far as he knew intended to do not writing.

Q Did he make any statements about retakes?

A Yes. I believe the picture had some post-production retakes to be made, and he very much wanted to be around during that activity.

Q With reference to his statement that he had been going to Twentieth Century-Fox, did you get any indication as to how long he had been going there during the period of the strike?

A No. I got the impression that it had been—that he had gone in quite a few times, but I don't believe any time element was mentioned.

Q With reference to the fact that he was going to continue working, did you get any indication about how long he thought he would have to continue working on this picture [48] after this date?

A Yes. I got the impression it would be a matter of weeks. I assume something in the nature of a month.

MR. ORMIN: I have no further questions, Mr. Chairman.

CROSS-EXAMINATION

BY MR. DERN:

Q Mr. North, in the course of your testimony you indicated that Mr. Roberts told you that he had rendered no writing services during the period of the strike up to April 4th; is that correct?

A That is correct.

Q What was you discussion with respect to the retakes that you testified to?

A Well, as I believe I said in my testimony, he did say that he had done no writing. And whether he was going to do writing or not of course I don't know.

Q Was there any discussion as to whether there would be any writing done in connection with the retakes? Did you raise that or did he raise it?

A I don't remember that this was raised. What I did say—He said that he had done no writing.

I said, "Bill, that according to the Guild rules, the strike rules, has really nothing to do with it. You are acting in other capacities and crossing the picket line, and according to Guild rules that's a violation."

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[60] WILLIAM ROBERTS,

testified as follows:

DIRECT EXAMINATION

BY MR. DERN:

Q Mr. Roberts, are you a member of the Writers Guild?

A Yes.

Q How long have you been a member of the Writers Guild? When did you first join?

A I first joined in '37. I thing the Guild changed [61] and I wasn't writing for a long period of time. I think again in '46, as I recall.

Q You have been a member since then until the present?

A Yes.

Q Are you currently a member of the Writers Guild?

A Yes.

Q You worked on a film entitled "The Last American Hero"?

A Yes.

Q And that was based upon the factual life of a man named Junior Johnson?

A Yes; right.

Q How did you acquire and in about what year did you acquire the rights in that property?

A In January 1970.

Q And you acquired the rights from a third party, did you?

A Yes. Tom Wolf.

Q Did you then do any writing of a script based on that property?

A Yes. I wrote the story, rewrote—wrote a script, rewrote it several times.

Q You did this for yourself or under employment?

A No. This was speculative on my own.

Q When did you first present that property to [62] Twentieth Century-Fox?

A Well, it was first presented in 1972.

Q Did you enter into any agreement at that time?

A No. They were interested in it, but the change in management caused the whole deal to die.

Q During this period were you in partnership with anybody else with respect to the property?

A Yes, I was.

Q What was that person's name?

A John Cutts.

Q Did you and Mr. Cutts form a partnership?

A Yes, we did.

Q What did you call it?

A Rojo Productions.

Q When did Rojo Productions first get into serious negotiation with Fox after the change in administration over there?

A It was somewhere around May or June 19—Wait a minute. I am sorry. That's in error. The first negotiation with Fox was in 1971 and the second time was 1972.

Q Did you enter into various agreements with them in 1972?

A That's right. Yes, I did.

Q Isn't it a fact that you personally entered into a writing employment agreement with Twentieth Century-Fox?

A Yes.

[63-64] Q What was the purpose of that?

A To make revisions as required by the studio.

Q Isn't it also a fact that the partnership entered into an agreement with Fox to furnish your services as co-producers, you and Mr. Cutts, of the film?

A Yes.

Q Were there any discussions with Fox at the time of the negotiation relative to your creative controls with respect to the property and the production of the film?

A Creative controls?

Q What were your rights as far as the film was concerned?

A Well, I suppose the normal producer's rights, which are mostly rights of persuasion and can always be overruled by the studio, naturally. Rights of consultation with regard to post-production.

I think everybody here knows you don't get any absolute rights as a producer hired by the studio.

Q Isn't it a fact, though, that they did agree because this was your property you had consultative rights throughout the picture?

A Yes.

Q And you in fact did enter into an agreement with Fox, or the partnership did, and I am going to treat you and the partnership basically the same, where you were to render services to Fox as the co-producers of the film?

[65] A Yes; that is right.

Q When did you complete the final draft of the revisions of the script for the motion picture, on or about?

A Well, the revisions were being made all the way through production, actually. It's very hard to say. You know, you do one set and then another set of revisions as required and then another writer was brought on. He did a complete revision, I revised his revision, continued to revise the script, as I say, continually through production.

Q When did the picture go into production?

A October the 14th, 1972.

Q When did it rap? When did you complete principal photography?

A December 2nd.

Q Where was the picture shot?

A In North Carolina and for one week in Virginia.

Q Where did you edit the picture, or where was the picture edited?

A Well, they were editing—There were cutters there editing as they were shooting, but the post-production editing was done at Twentieth Century-Fox Studio.

Q I am going to show you a memo that you wrote dated February 26th.

A Yes.

CHAIRMAN ORINGER: Can we pause for just a minute to look at this?

[66] MR. DERN: Certainly.

Maybe I should identify what it is, because we are going to come back to it later.

Q What is this?

A This is a memo written by me after seeing the director's cut of the film stating objections, mine and Mr.

Cutts' to what we had seen on the screen, addressed primarily to Jerry Henshaw with copies going to other people. The purpose being to elicit studio support for our point of view with regard to the film, what should be done to it.

CHAIRMAN ORINGER: Excuse me. Would you like the Committee to examine this in any detail?

MR. DERN: I will try to bring out what it is and then you can decide.

CHAIRMAN ORINGER: That's fine.

MR. DERN: Q Does this document contain suggestions, for example, for changes about the film?

A Editing changes, yes. And one important thing which goes way back to the time it was shot. I will go into that in detail. The director photographed the ending of the film in a way which startled us all, including the studio, because it was never anticipated that the central character would be whipped at the end, be a loser, which is the way it was photographed, the way it was shot and acted.

I raised serious objections to that, so did Mr. Cutts. The director wouldn't even discuss it. He was very [67] angry and stalked out of the meeting. The suggestion for reshooting that very tag, which is about 20 seconds of screen time, was made in that memo after seeing the first cut.

Q Your suggestion, you are saying, was to make an upbeat ending?

A Yes, much more of an upbeat ending.

Q Instead of downbeat?

A Yes.

Q You wrote that memo and you made that suggestion on what date?

A This was February the 26th, 1973.

Subsequently, after pressure from other quarters, including salesmen—Mr. Cutts was involved in that; I wasn't there. Sales people for Fox, they didn't like the ending either, and Jerry Henshaw finally said, "Reshoot it."

Q Let me interrupt you. Is this the reshooting that Mr. North was referring to?

A Yes. That tag.

Q Nothing else was reshot?

A Not after the completion of December 2nd. Things were reshot during the course of making the film.

Just parenthetically, Lamont Johnson, as I say, when we tried to discuss it with him during the course of production refused to discuss it and stalked out of the office where the discussion was taking place. He just [68] refused to discuss it at any time thereafter until ordered by the studio to reshoot the ending.

Quite honestly, I wasn't sure that he would do it even then, because very often the studio would order him to do something and he would either ignore the studio or do it his way. And this caused a great deal of friction during the course of production.

At any rate, I went in to the studio that day to make sure he did what he had been ordered to do. That was the reason for going in at that time.

Q About when was that? It was after March 6th; is that correct?

A Yes. It was during the strike.

Q When they reshot that ending or that tag, as you call it, did they follow the suggestions which you had written up in your February 26th, 1973 memo?

A Yes.

Q Were there any changes in dialogue?

A The actor, Jeff Bridges, my conception was that it be silent, that he make a triumph gesture to his friends with a cup that he won. And Jeff said that he felt awkward with that and, "Why don't I say, 'Hey, I won.'"

Q Did you furnish that line to Jeff Bridges?

A No.

• • • •

[83] Q You have been a member of the Guild for a long time. I won't repeat the years again. I presume you are pretty well familiar with what "writing" is. I am not [84] conceding for purposes of this question that you couldn't have written while you were there, but I know that you didn't want to write, and that was your feeling?

A No, I didn't.

Q Did you do anything which in your mind constitutes writing services during the strike?

A Not in my mind, no.

I am told that there is a definition of "writing" which is broad. I remember briefly being on a negotiating committee, not the last time but sometime in the past, and the question came up if an actor changes a line or a director changes a line during the course of production he has to join the Guild. I though it was an absurd statement and I still do. But from my point of view, I was functioning as a producer.

Q You didn't add any lines, you didn't change any lines?

A No, none of that.

Q You didn't make any suggestions as to lines?

A I suggested editing, editing out.

Q Do you mean cutting?

A Cutting. Some of the stuff was so bad, the only way to correct it was to eliminate it. In that memo you will see I suggested some things, changes in juxtaposition of lines.

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[3] MR. KNOPF: I will call our meeting into session. The meeting will come to order. This is a disciplinary hearing in the matter of Writers Guild of America, West, Inc. versus Albert Ruddy.

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[65] MR. SMITH: Respondents would call Mr. Richard Moyer, please.

RICHARD MOYER,

called as a witness by and on behalf of Respondent, was examined and testified as follows:

EXAMINATION

BY MR. SMITH:

• • • •

[69] Q Now, Mr. Moyer, to your knowledge, does [70] Mr. Ruddy perform any writing services or do any writing work whatever in connection with his functions at Paramount?

A No. He has never represented himself as a writer, to my knowledge, and I was surprised to learn today when I was asked to come down here that he was even a member of the Writers Guild. He was or has never presented himself as a writer on any of the projects as put forth to is.

Q In all of your dealings with Mr. Ruddy in your official capacity at Paramount, Mr. Moyer, did you know or was it ever communicated to you that Mr. Ruddy attempted to do or perform any writing functions whatsoever?

A No.

Q When did you first discover that Mr. Ruddy was at any time a writer?

A Well, as I say, today I found out that he was a member of the Writers Guild, and when the HOGAN'S HEROES thing was brought up, I knew that he had something to do with that. I didn't realize though that he had been a writer on the pilot of it.

• • • •

[4] MR. KNOPF: That is accepted.

This is a disciplinary hearing in the matter of the Writers Guild of America, West, Inc., versus Herman S. Saunders, S-a-u-n-d-e-r-s. This matter is being heard before a Trial Committee duly convened pursuant to Article 10 of the Constitution and By-Laws of the Writers Guild of America, West, Inc. The members of the Trial Committee are James Poe, Nate Monaster, Michael Blankfort, Emmet Lavery, and Christopher Knopf, Chairman.

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[21] MR. MENDONSA: Yes. Very briefly, we intend to show that Herman Saunders did work for Universal City Studios or an affiliate of that company in violation of the Strike Rules, in violation of the Strike Orders. We intend to show that he crossed that picket line at Universal in violation of Strike Rules 12 and 13, and that his conduct was in violation of Rule 1 of the Strike Rules.

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[22] MR. MENDONSA: Yes. I will call S. S. Schweitzer, please.

S. S. SCHWEITZER,

called as a witness, was examined and testified as follows:

EXAMINATION

BY MR. MENDONSA:

• • • •

[23] Q Let me direct your attention to April of 1973.

On that occasion, did the name of Herman Saunders come to your attention as a possible violation of one of the Guild's Strike Rules or Strike Orders?

A It did.

Q Can you tell us how that came to your attention?

A Well, apparently there had been an article in one of the trade papers which mentioned his name, and I was [24] asked to check on that, which I did.

Q You say you checked on it.

What did you do to check it?

A I called Universal Studios and asked for Herman Saunders.

Q And did you talk with Mr. Saunders at that time?

A I talked with Mr. Saunders at that time.

Q Did he identify himself as Mr. Saunders?

A Yes, but I have known Mr. Saunders for about 10 years.

Q And you then recognized his voice?

A I recognized his voice. He recognized my voice.

Q And the number you called was that of Universal City Studios, Inc.?

A 985-4321.

Q Now, will you tell us what you said to Mr. Saunders and what he said to you in that telephone conversation?

A Well, I told him I was calling to clarify, that I had been asked to call to clarify what was in the trades. I did affirm that he was indeed going in. He said that he had been made executive producer, and he felt that he had an obligation to go in. I might have argued that I didn't feel that he should.

He affirmed to me that he wasn't writing and that he didn't intend to hire writers, and he did make mention of the fact that he had never made much money as a writer anyway.

[25] Q Did he tell you in that telephone conversation what project he was working?

A He said that Webb had made him executive producer. I don't remember that he mentioned the project. I might have assumed it was ADAM-12, but I don't remember whether he mentioned it.

Q Did the trade paper that you made reference to refer to what projects he was working on, do you recall?

A I don't recall.

Q Do you recall which company or what company he was working for at that time?

A I assumed it was Mark 7, which is the Webb company.

Q You are referring to Jack Webb?

A Jack Webb.

Q Well, you said that you assumed.

Is that something that you assumed, or is that some knowledge you gained from the trade papers?

A Well, I don't remember the trade papers. He did mention the fact that it was Webb who made him an executive producer, so I figured he was still working for Webb.

Q Did you advise him of the possible consequences of crossing the line or working for a struck company?

A Yes, I did.

Q And can you tell us what it is that you told him?

A Well, I told him that I hoped what I had seen in the papers was not true, and I also advised him that, having talked to him and having verified the fact that he was in, I was going to have to report this and that there would [26] probably be some kind of disciplinary action.

• • • •

[ARNOLD SHANE—EXAMINATION]

[57] Q Are you knowledgeable with respect to Mr. Saunders' personal service contract with Universal City Studios or with Mark 7 Productions?

A Yes, I am.

Q And with which entity is that?

A That contract? Universal City Studios, Inc.

Q Is that an exclusive contract or are his services exclusive to Universal City Studios?

A Yes, they are.

Q Does his contract provide for writing services?

[58] A If required by Universal.

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[4] MR. KNOPF: This is a disciplinary hearing in the matter of Writers Guild of America, West, Inc., versus Frank Paris. This matter is being heard before a Trial Committee duly convened pursuant to Article X of the Constitution and By-Laws of the Writers Guild of America, West, Inc. The members of the Trial Committee are James Poe, Nate Monaster, Michael Blankfort, Emmet Lavery, Christopher Knopf, Chairman.

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[32] CAREY WILBER

called as a witness, was examined and testified as follows:

EXAMINATION

BY MR. MENDONSA:

Q Will you please state and spell your name?

A Carey, C-a-r-e-y, Wilber, W-i-l-b-e-r.

Q Mr. Wilber, you are a member of the Writers Guild of America, West, Inc.; is that correct?

A Correct.

Q And approximately how long have you been a member of the Guild?

A About 20 years.

Q And I believe you testified in a prior case you are co-chairman of the Strike Services Committee.

A That is correct.

Q And approximately how long have you held that position?

A October, I believe.

Q October of 1972?

A Right.

Q And will you give us a brief description of your duties as they were in the month of February—make it more specific than that—a description of your duties as they were on or about February 27, 1973.

A Organizing picket lines for the studios in the event a strike was called.

Q And how did your committee or you go about that?

[33] A We have a telephone committee which called members of the Guild to give them picket assignments.

Q And did you make such calls?

A No. Under our setup, the members of the telephone committee members, gave them picket assignments. If there was any problem, any refusal to picket, these people were handed over to Miss Kay Leonard and myself to follow up on call-backs.

Q Now, directing your attention to February 27, 1973, did you on that date have a telephone conversation with a Frank Paris?

A I did.

Q And did you call him or did he call you?

A One of our telephone committee called him, there was a conflict, and I talked with him.

Q I see. And did he identify himself as Frank Paris?

A Yes.

Q And did you identify yourself?

A Yes.

Q Will you tell us what was said in that telephone conversation. What did you say to him and what did he say to you?

A First off, it was a case where he had refused to picket. I told him that he had an obligation as a member of the Guild to perform picket duties. He said that he would be unable to perform such duties, because he was going in to work in an executive capacity at Disney Studios. I [34] read him the strike rules and regulations covering these matters, specifically the obligation to picket, the penalties involved for refusal to picket, for failure to picket, and also the position of the Guild on people who crossed our picket lines in the event of a strike. Mr. Paris told me that he felt he was in an executive capacity, that he was not involved with writing, that

he had a contract with Disney Studios which he felt morally obligated to fulfill. I urged him at that time to consult with the Guild council before making an irrevocable decision, and he advised me that he had ample counsel from other sources. That was about the gist of the conversation.

Q You said you read to him the rules. May we at this time agree to incorporate into this record the Rules for the Conduct of Members During a Strike dated February 20, 1973, and the Constitution and By-Laws and the strike order that was dated March 5, as we have in prior cases?

MR. HOLTZMAN: That will be satisfactory.

MR. KNOPF: They are received.

Q BY MR. MENDONSA: Let me show you the Rules for the Conduct of Members During a Strike dated February 20, 1973. Will you tell me what specific rules you read to Mr. Paris?

A (Reading) "Rule 28: The Guild shall have authority to assign and direct members in the performance of duties relating to the strike including, but not limited to, picket duty. Any [35] member found guilty of refusal to perform picket duty shall be fined not less than $100 per day for each day of such refusal to perform.

"All members are prohibited—"

Article 12.

"All members are prohibited from crossing a picket line which is established by the Guild at any entrance to the premises of a struck producer."

MR. MENDONSA: I have no further questions.

MR. KNOPF: Mr. Holtzman?

MR. HOLTZMAN: Yes.

BY MR. HOLTZMAN:

Q Mr. Carey—

MR. KNOPF: It's "Wilber."

THE WITNESS: Everybody makes that mistake.

Q BY MR. HOLTZMAN: Mr. Wilber, do you still have before you the Rules for the Conduct of Members During a Strike?

A No.

MR. MENDONSA: He does now.

Q BY MR. HOLTZMAN: Will you take a look at Rule 30 as set forth therein.

A Yes.

Q Would you read it.

[36] A (Reading) "Article 30: No member shall work with any individual, including a writer-executive, who has been suspended from Guild membership by reason of his violation of strike rules, or who has been found by the council to have violated strike rules, in the event no disciplinary action was instituted against such person."

Q Now, referring to this telephone conversation that you had with Mr. Paris on the occasion you described, you read that rule to him also at that time, did you not?

A No, I did not read that rule to him. I had a discussion with Mr. Paris about that, which I quite fervently urged him not to take this step. And I mentioned this rule, but I did not read the rule as mentioned here.

Q You told him in substance that he would be penalized to such an extent that no writer would work for him at Disney if he was disciplined by the Guild?

A I remember my exact words to him—searching my recollection now, I said, "Frank, the rules are horrendous, and I urge you not to take this step."

Q Specifically, you told them that no writer would work for him if he was disciplined?

A I told him, yes.

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[4] MR. KOPF: The hearing will come to order. This is a disciplinary hearing in the matter of the Writers Guild of America, West, Inc. versus Coles Trapnell. This matter is being heard before a trial committee duly convened pursuant to Article 10 of the Constitution and Bylaws of the Writers Guild of America, West, Inc.

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[70] ARNOLD SHANE

called as a witness on behalf of the Respondent, testified as follows:

EXAMINATION

BY MR. SUSMAN:

Q Will you state your name for the record?

A Arnold Shane.

Q And you are employed at Universal City Studios?

A Yes, I am.

Q Briefly, what is the nature of your employment?

A I am a business affairs executive for television at Universal Television.

Q You have been for a number of years?

A Yes, I have.

Q You have seen the letter of March 6, 1973 written by Mr. Trapnell?

A Yes.

Q To your knowledge, do the facts set forth therein regard the nature of his activities at Universal?

A Yes. They were as of the dates of this letter.

Q Without repeating the content of the letter, am I correct that Mr. Trapnell performs no writing services at the studio?

A That's correct.

Q His activity basically was devoted to the [71] determination of what material crosses through the story department in television was susceptible to be purchased by Universal; is that correct?

A Yes.

Q Now, you mentioned that as of the date in the letter the statement is correct. Since that date has there been a change in his activities?

A Yes, there has. Starting last week, he was placed in charge of the overall studio story department for both features and television.

Q What does that encompass?

A It encompasses reading material and recommending the purchase for production of the material for both features and television. It also encompasses the super-

vision of all of the studio story analysts who write the synopses of material that comes into the studio.

Q And is he considered an executive at the studio?

A Yes, he is.

• • • •

Q Are you familiar with his personal service contract, Mr. Trapnell's personal service contract with Universal?

[72] A Yes, I am.

Q And does that contract give the company the right to require him to perform writing services?

A Yes.

• • • •

[3] MR. LAVERY: This is a disciplinary hearing in the matter of the Writers Guild of America, West, Inc. vs. Robert Blees.

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[GENE LEVITT—EXAMINATION]

[39] Q Prior to March 6th, you stated you were producer of BARNABY JONES. What were Mr. Blees' duties as your story editor?

A I suppose they were twofold. To aid me in the selection of stories, finding stories, and shaping and forming those to our requirements, and B, doing rewriting work on stories where we had—either with—in concert [40] with the writer or after the writer had done his rewrites, doing our own polish. And further writing as dictated even by me, or by the executive producer or supervising producer.

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[84] RESPONDENT'S EXHIBIT No. 1
[P.M.R.]
[N.P.]

DECLARATION OF ROBERT BLEES

I, ROBERT BLEES, say and declare as follows:

1. I am a member of the Writers Guild of America, West, Inc. (WGA), and have been a member of such Guild since approximately 1940 . . . , and have previously served as a member of such Guild's Executive Board, and am a Founding Trustee of the WGA Pension Plan—having served in such capacity for ten years.

2. At the inception of a strike by WGA on or about March 6, 1973, I was employed by Quinn Martin (Q.M.) Productions, Inc. in the capacity of "Exectuive Story Consultant" for the "Barnaby Jones" television series, produced at Samuel Goldwyn Studios in Los Angeles, California.

3. As of March 6, 1973, I advised Q. M. Productions and WGA that during the pendency of the WGA dispute, I would refrain from any and all activities involving the writing, rewriting, or editing of scripts and stories; conversations with writers or their agents concerning professional employment matters; and any and all other activities concerned with the writing of scripts and stories, and I did, in fact refrain from such activities.

I declare under penalty of perjury that the foregoing is true and correct.

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[4] CHAIRMAN LAVERY: Well, then, we are on. The hearing will come to order. This is a disciplinary hearing in the matter of the Writers Guild of America, West, Incorporated, versus John Mantley.

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[28] MR. MENDONSA: We call as our next witness Mr. Sidney Ellis.

SIDNEY ELLIS,

called as a witness by and on behalf of the Writers Guild of America, West, Inc., was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MENDONSA:

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[31] Q All right. Mr. Ellis, will you tell us now what you said to Mr. Mantley and what Mr. Mantley said to you during that telephone conversation?

MR. CURTIS: For the record, we will object to the question asking for hearsay.

MR. MENDONSA: For one thing, this is not hearsay. It is the party making the declaration, and it is a party to this proceeding and an exception to the hearsay rule.

CHAIRMAN LAVERY: Well, the Chair rules adversely to the exception taken by Mr. Curtis. Also, as an unnecessary reminder, perhaps, but in this Committee's approach as a fact-finding committee, we don't invoke too many exclusionary rules in order to get at the facts. We have a fairly fluent approach, not irrelevant approach.

Anyway, we do want to hear the witness.

THE WITNESS: Well, I can't give it to you word for word, but I told John who I was and why I was calling. The reason for the call was to ascertain if he was at his office at CBS and if he was working and whether the article that appeared in the trades quoted him correctly in that. He said that it did and he proceeded to tell me that as he had told John Furia in a long conversation a day or so before, he felt basically

that he had an obligation, a moral obligation to live up to his contract with CBS and he did deny or he did state, rather, that he had no intention of doing any writing, but that he was going to continue to produce "Gunsmoke" for CBS as his contract and his conscience [32] required.

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[73] DECLARATION OF JOHN T. MANTLEY

I, John T. Mantley, say and declare as follows:

1. I am the Executive Producer of the "Gunsmoke" television series for CBS.

2. Since March 28, 1973, when CBS was struck by the Writers Guild of America, Inc., neither I nor any of my production office staff have performed any writing functions whatsoever.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 31st day of May, 1973, at Los Angeles, California.

/s/ John T. Mantley
JOHN T. MANTLEY

• • • •

[4] MR. KNOPF: The hearing will come to order. This is a disciplinary hearing in the matter of the Writers Guild of America, West, Inc. versus David Victor. The matter is being heard before a trial committee duly convened pursuant to Article 10 of the Constitution and By-Laws of the Writers Guild of America, West, Inc.

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[88] MR. MENDONSA: I intend to prove Mr. David Victor did cross the picket lines at Universal City Studios during on or about the first week of April of 1973 and did in fact cross the lines thereafter during the month of April; that he did so in violation of this Guild Strike Order; that the Guild was on strike against Universal City Studios at that time; and that he thereby violated Sections 1, 12 and 13 of the Rules of Conduct of Members during a Strike, which related to February 20th, 1973 as stated in the charges which are a part of Trial Committee's Exhibit No. 1.

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[89] MR. MENDONSA: I will call as our first witness Betty Anderson.

BETTY ANDERSON,

called as a witness on behalf of the Writers Guild, testified as follows:

EXAMINATION

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[90] A On that morning I was performing the administrative function having to do with the card files and answering the telephone which is on that table.

Q You say "that morning." Let me direct your attention to April 10 of 1973.

[91] On or about that date, were you working at the strike headquarters?

A Yes, and I answered the telephone.

Q You did answer telephones as part of your function?

A Yes.

Q On that day, did you have occasion to have a telephone conversation with David Victor?

A Yes. Mr. Victor called around 9:00 o'clock, and he was very friendly. He said he had been out of town, and he promised to call upon his return. He got his picket assignment. He wanted to fully support the Guild strike. He had been out of town, and he had promised to call on his return to get a picket assignment, and he

was willing to fully support the Guild's strike, and that he was available for an assignment, and I asked him then if he had a preference, that when it was possible we would honor his preference for a particular place to picket.

And he said that he didn't really, that he couldn't picket this week, but he would be available the following Monday.

And I said then, "We'll be able to get in touch with you later. It will be necessary for me to check our schedules to find out where you would be most needed."

He said, "Well, you can reach me anytime. I'm in my office on the Universal Studios lot." He said, "You know, I'm preparing a picture here. I'm not writing. I'm doing some pre-production work. It's very important."

He went into quite a lot of detail about the name [92] of the picture.

Q Do you recall the name?

A No, I don't. It has sort of slipped out of my mind. Perhaps I knew I wouldn't be able to recall it later, but I didn't realize at the time that it was that important.

So I said to him, I said, "Well, Mr. Victor, the fact that you are at Universal, is that the phone number where you are asking me to call you?"

And he said, "Oh, yes. I'll be here every day."

I said, "Mr. Victor, that is in violation."

He said, "Oh, honey, you understand I'm not writing. I'm preparing a picture for production. There is a lot of pre-production stuff that has to be done."

He said, "Yes, I'm sure that I'm not writing. I want to have a picket assignment, but you have to understand that—"

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[93] MR. MENDONSA: We call as our next witness Cary Wilber.

CARY WILBER,

called as a witness on behalf of the Writers Guild, testified as follows:

EXAMINATION

BY MR. MENDONSA:

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[94] Q Directing your attention to April 10 of 1973, did you on that date have occasion to speak with Mr. David [95] Victor?

A Yes.

Q And was that conversation on the telephone?

A Yes.

Q Did you identify yourself to Mr. Victor?

A Yes.

Q Did he identify himself?

A Yes.

Q Would you tell us now what Mr. Victor said to you and what you said to him in that telephone conversation.

A As I recall, a member of the telephone committee called me over and stated that David Victor was calling from his office at Universal. She wasn't quite certain how to handle it. I spoke to Mr. Victor and told him that by being in his office he had crossed the picket line and was in violation of the strike rules.

Q And what did he say to you?

A He stated that he was in there going through preproduction on a motion picture, that he felt under the terms of his contract with Universal he was obliged to cross the picket line. He assured me that he was not doing any writing duties but that he felt that as a matter of conscience and principle he should respect his contract with Universal Studios.

Q Did you say anything more to him then?

A Yes, I warned him that he was in violation and that a complaint would have to be filed with the disciplinary committee if he continued.

• • • •

[98] MR. MENDONSA: Since we have had a portion of an affidavit, a supposed affidavit, an affidavit that is going to be submitted into a hearing, I think I should then read the memorandum with respect to that telephone conversation from Mr. Alan Griffiths. This is a memorandum addressed to the investigatory committee.

MR. MILLER: Mr. Griffiths is here, isn't he?

MR. MENDONSA: Are you going to bring Mr. Victor in to testify as to the one you just read?

MR. SMITH: I think if Mr. Mendonsa is going to read into the record a record of memorandum, that the memorandum ought to be, you know, offered as an exhibit rather than a [99] portion of it read into the record. I know that we have very loose evidentiary rules here, but—

MR. MENDONSA: Well, I am not asking for anything other than what is being granted to you. You read into the record a part of an affidavit. If you want to present the affidavit, I want to present them now. I don't care—

MR. KNOPF: I would like to hear the memo. I have no objection to it. Please read it.

MR. MENDONSA: It is addressed to Paddy Schweitzer, chairman of entries.

"Dear Paddy: David Victor rang me this morning to announce his intention of violating our strike order and going to work for a struck producer, Universal. He said he was aware that this action was in violation and would subject him to discipline by this Guild. Nevertheless, he felt obliged to adhere to his contract with Universal because of the advice he had received from the Producers Guild, of which he is a member.

"He would commence work today. He said in mitigation that he supported this Guild strike and would not perform any writing duties whatsoever. He was willing to picket, if called upon to do so, and support the Guild in any other way open to him.

• • • •

[118] ARNOLD SHANE,

called as a witness on behalf of the respondent, testified as follows:

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[129] It might be that the executive producer actually wrote or rewrote? I am not saying in this case that Mr. Victor did at this time, but generally speaking in pre-production, is it not possible that the executive producer might be rewriting a speech or rewriting a line of the development of a script?

THE WITNESS: It is possible, but I know that Mr. Victor generally doesn't work that way.

MR. BLANKFORT: So it generally is part of pre-production, but Mr. Victor doesn't engage in an examination of story with the director in pre-production?

THE WITNESS: No. That is not what I meant at all. What I meant was that Mr. Victor generally does not do the rewriting on his scripts. He develops through story conferences with writers.

MR. BLANKFORT: So do you think that reconstructing a story line—if I said to you that of a writer, I would feel that working on a plot or a structure of a story and writing it is the same as doing dialogue. Would you accept that definition?

THE WITNESS: Not necessarily. I feel that part of a producer's function comes within the exceptions of Sections A through H of the Writers Guild agreement. I don't recall which specific article it is.

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[136] EXAMINATION

BY MR. MILLER:

Q Mr. Shane, you testified that Mr. Victor was out of town until approximately April 9th from March 6th; is that correct?

A Yes.

Q Mr. Victor was on vacation?

A Yes.

Q During the week of April 9th to the best of your knowledge did Mr. Victor perform any writing services for Universal City Studios?

A He did not.

• • • •